

CASE NO.:
Appeal (civil) 7067 of 1994

PETITIONER:
U.P. AWAS EVAM VIKAS PARISHAD

RESPONDENT:
GYAN DEVI (DEAD) BY L.RS. AND ORS.

DATE OF JUDGMENT: 20/10/1994

BENCH:
M.N. VENKATACHALIAH CJ & P.B. SAWANT & S.C. AGRAWAL & R.M. SAHAI & S.P. BHARUCHA

JUDGMENT:
JUDGMENT

1994 (4) Suppl. SCR 646

The Judgment of the Court was delivered by
S.C. AGRAWAL. J. : Leave granted.

These appeals arising out of proceedings for acquisition of land for the U.P. Awas Evam Vikas Parishad, hereinafter referred to as 'the Board', raise common questions involving the interpretation of Sub-Section (2) of Section 50 of the Land Acquisition Act, 1894 (hereinafter referred to as 'the L.A. Act') and, therefore, they are being disposed of by this common judgment.

The Board has been constituted under Section 3 of the U.P. Awas Evam Vikas Parishad Adhiniyam, 1965 (U.P. Act No. 1 of 1966), hereinafter referred to as 'the U.P. Act'. Under Section 15 of the U.P. Act one of the functions of the Board is to frame and execute housing and improvement schemes and other projects. Section 16 provides that the Board may on its own or at the instance of a local authority frame a housing or improvement scheme and that the Board shall frame such a scheme when so directed by the State Government. Section 17 prescribes the matters which are required to be provided for such schemes. Sub-section (1) of Section 28 makes provision of preparation of a notice by the Board when any housing or improvement scheme has been framed and the said notice is required to be published in the manner as prescribed in sub-section (2) of Section 28. Section 30 makes provision for filing of objections against the scheme and section 31 provides for sanction of the scheme, with or without modifications, after considering the objections, if any, received under Section 30. Such sanction is to be given by the Board when the estimated cost of the schemes does not exceed Rs. 20,00,000 and by the State Government where the estimated costs exceeds that amount. Sub-section (1) of Section 32 provides that whenever the Board or the State Government sanctions a housing or improvement scheme, it shall be notified in the Gazette and sub-section (2) lays down that the notification under sub-section (1) in respect of any scheme shall be conclusive evidence that the scheme has been duly framed and sanctioned. In cases where the scheme is sanctioned by the Board and appeal lies to the State Government against the decision of the Board under sub-section (3) of Section 32 and if the scheme is altered or cancelled by the State Government on such appeal the cancellation or alteration is required to be notified in the Gazette under sub-section (4) of section 32. Section 55 makes provision for acquisition of land or any interest therein required by the Board for any of the purposes of the U.P. Act and lays down that such acquisition may be made under the provisions of the L.A. Act as amended in its application to Uttar Pradesh and further provides that the L.A. Act for this purpose shall be subject to the modifications specified in the Schedule to the U.P. Act. Section 64 provides for the constitution of one or more tribunals by the State

Government for the purpose of performing the functions of the court with reference to the acquisition of land for the Board under the L.A. Act, as modified by the Schedule to the U.P. Act. In the Schedule to the U.P. Act modifications have been introduced in the provisions of the L.A. Act. Some of the said modifications which are relevant for the purpose of the present case are :

(a) Clause (i) has been added in Section 3 whereby the 'local authority' has been defined to include 'the Board'.

(b) The first publication in the Official Gazette of a notice of any housing or improvement scheme under Section 28 or clause (a) of sub-section (3) of Section 31 of the U.P. Act is to have the same effect as publication in the official Gazette of a notification under sub-section (1) of Section 4 of the L.A. Act.

(c) The publication of a notification under sub-section (1) or, as the case may be, under sub-section (4) of section 32 of the U.P. Act is to have the same effect as a declaration by the Government under Section 6 of the L.A. Act:

(d) Sub-sections (1) and (1-A) of Section 17 of the L.A. Act as applicable in the State of U.P. have been substituted by sub-section (1) which provide that whenever the State Government so directs in the interest of the expeditious execution of a housing or improvement scheme under U.P. Act, the Collector, though no such award has been made, may on the expiration of fifteen days from the publication of the notice mentioned in sub-section (1) of Section 9 take possession of any land needed for the purposes of the U.P. Act and such land shall thereupon vest absolutely in the Government free from all encumbrances.

(e) Section 17-A has been added whereby it has been provided that in every case referred to in Section 16 or Section 17, the Collector shall upon payment of the cost of acquisition make over charge of the land to the Housing Commissioner, or an officer authorised in this behalf under the U.P. Act and the land shall, thereupon vest in the board subject to the liability of the Board to pay any further costs which may be incurred on account of its acquisition.

The Board framed a scheme known as the "Trans-Yamuna Housing & Accommodation Scheme" and notice under Section 28 of the U.P. Act in respect of the said scheme (analogous to a notification under section 4(1) of the L.A. Act) was published on January 31, 1970 and the notification under Section 32 of the U.P. Act (analogous to declaration under Section 6 of the LA. Act) was published on August 21, 1974. The Special Land Acquisition Officer made an award on April 15, 1978, wherein amount of compensation was fixed by adopting 'belting system'. The land under acquisition was divided in three belts and bye-pass road which lay in the south was made the basis for such belting. Compensation @ Rs. 7.50, Rs. 5.00 and Rs. 3.75 per sq. yd. was awarded as for the first, second and third belts respectively. The possession of the land was taken on April 27, 1978. At the instance of the land owners reference was made to the tribunal constituted under Section 64 of the U.P. Act. The tribunal by a common award dated June 28, 1985 fixed the market value of the acquired land of the appellants in the appeals at a flat rate of Rs. 16.54 per sq. yd. First Appeals Nos. 586, 587 and 641 of 1985 were filed by the appellants in appeals arising out of S.L.P. (C) Nos. 391-393 of 1992 against the said award of the tribunal. The appeals were allowed by a division bench of the High Court (K.P. Singh and P.P. Gupta, JJ.) by judgment dated April 18, 1991 whereby the belting system was restored and compensation amount has been enhanced to Rs. 25.00 per sq. yd. for the lands falling in the first belt, Rs. 23.50 per sq. for the lands falling in the second belt and Rs. 20.00 per sq. yd. for the lands falling in the third belt. Solatium at the rate of 30% on the amount of enhanced compensation has been awarded and interest at the rate of 9% for the first year from the date of taking

possession and at the rate of 15% per annum for the subsequent years has been awarded. The High Court has, however, not awarded the amount payable under sub-section (1-A) of Section 23 of the L.A. Act. Appeals arising out of S.L.P. (C) Nos. 391-393 of 1992 have been filed by the land owners against the said judgment of the High Court in this Court. The appellants in appeals arising out of SLP (C) Nos. 15810-12/91 filed First Appeals Nos. 584, 585 and 642 of 1985 in the High Court against the award the tribunal. The said appeals were, however, dismissed by another division bench of the High Court (N.N. Mithal and K.K. Chaubey JJ.) by Judgment dated December 21, 1990 and the award of the tribunal awarding compensation @ Rs. 16.50 per sq. yd. was maintained. The High Court also negatived the claim of the land owners for the amount payable under Section 23 (1-A) of the L.A. Act. Feeling aggrieved by the said judgment of the High Court, appeals arising out of S.L.P. (C) Nos. 15810-12/91 have been filed by the land owners.

The Board was not impleaded as a party in the reference before the tribunal or in the appeals before the High Court.

On September 9/10, 1991, the Board filed review petitions in the High Court for the review of the judgment dated April 18, 1991 in First Appeals Nos. 586, 587 and 641 of 1985 and the delay in filing of the said review petitions was explained on the ground that the Board become aware of the decision of the High Court only on August 19, 1991 when the then Legal Advisor of the Board read the said judgment of the High Court in the law reports. The said review petitions were dismissed by the High Court by order dated January 20, 1993 on the ground of delay and for want of paying proper court fees Appeals arising out of S.L.P. (C) Nos. 15085/93, 15057/93 and 13858/93 have been filed by the Board against the said order of the High Court.

The Board has also filed applications for being impleaded as a party in the appeals filed by the land owners in this Court.

The question which needs to be determined is whether the L.A. Act confers any right on the Board to participate at the stage of determination of compensation for the land which is sought to be acquired under Section 55 of the U.P. Act read with the provisions of the L.A. Act, as modified by the Schedule to the U.P. Act and to assail such determination if the Board feels aggrieved by the same. As indicated earlier, by virtue of Section 3(i) that has been introduced in the L.A. Act by the U.P. Act the Board is a local authority for the purpose of the L.A. Act. The question aforementioned has, therefore, to be examined in the light of the provisions contained in the L.A. Act relating to acquisition of land for a local authority. The provisions which have a bearing on this question are contained in Section 50 of the L.A. Act which reads as under :

"50. Acquisition of land at cost of a local authority or Company. -(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 proceeding 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."

Sub-section (2) of Section 50 enables a local authority to appear in any acquisition proceeding at the stage of determination of compensation before the Collector or the reference court and adduce evidence for the purpose of determining the amount of compensation. The object underlying the aforesaid provision appears to be to safeguard the interests of the local authority who would be required to pay the amount of compensation that would be

determined by the Collector or by the Reference Court by enabling it to adduce evidence having a bearing on the amount of compensation before the Collector or the Court and thereby assist them in making a fair determination. Such protection was necessary because in the matter of acquisition under the Land Acquisition Act a local authority for whom the land is acquired does not stand on the same footing as the Government. While making the award the Collector acts as an agent of the Government and functions under its administrative control. Prior to the insertion of the Proviso in sub-section (1) of Section 11 of the L.A. Act by the Land Acquisition (Amendment) Act, 1984, there were administrative instructions requiring preliminary valuation by the Collector of the land being acquired and if the Collector found that the eventual award would substantially exceed the provisional valuation he was required to obtain further instructions from the higher authorities. Now the proviso inserted in sub-section (1) of Section 11 by the Amendment Act of 1984 lays down the statutory requirement that no award shall be made by the Collector without previous approval of the appropriate Government or of such officer as the appropriate Government may authorize in this behalf. There is no similar provision requiring the approval of the local authority. Sub-section (2) of Section 50 is the only provision which affords a certain degree of protection to it in the matter of determination of the amount of compensation by the Collector as well as the Reference Court. Keeping these considerations in view we are of the opinion that sub-section (2) of Section 50 must be construed as conferring a right on the local authority for whom the land is being acquired to participate in the acquisition proceedings at the stage of determination of the amount of compensation before the Collector as well as the reference court.

The said right can be effectively exercised by the local authority only if it has information for the proceedings which are pending before the Collector as well as the reference court. In other words the right conferred under Section 50(2) of the L.A. Act carries with it the right to be given adequate notice by the Collector as well as the reference court before whom the acquisition proceedings are pending of the date on which the matter of determination of the amount of compensation will be taken up. Service of such a notice, being necessary for effectuating the right conferred on the local authority under Section 50(2) of the L.A. Act, can, therefore, be regarded as an integral part of the said right and the failure to give such a notice would result in denial of the said right unless it can be shown that the local authority had knowledge about the pendency of the acquisition proceedings before the Collector or the reference court and has not suffered any prejudice on account of failure to give such notice.

The only limitation on the right conferred by Section 50(2) is that contained in the proviso to Section 50(2) which precludes the local authority from demanding a reference under Section 18. In the report of the Select Committee the policy underlying the proviso has been thus explained :

"..... We cannot however agree that the authority should be permitted to appeal from the Collector's award. We have not given to Government itself the power to make this appeal because the Collector is only the agent of the Government in the acquisition of land; his action is taken under the rules laid down for his guidance which include a preliminary valuation and these rules ordinarily provide and sought to provide, that when the Collector finds cause to anticipate that his eventual provisional estimate, he shall stay all proceedings till he receives the further instructions of higher authority. No local authority or company is compelled to proceed under the Land Acquisition Act. If it can procure land more cheaply by private negotiations, it is certainly at liberty to do so but if elects to set in motion the very special power given to the Government for public objects, it can expect no higher privileges and powers than those given to Government itself."

(See : V.G. Ramachandran - Law of Land Acquisition and Compensation, 7th Edn., Vol.-1 at p. 1045)

Having regard to the difference between the position of a local authority for whom the land is acquired and the Government in the matter of determination of the amount of compensation by the Collector to which the reference has been made by us earlier and especially after the insertion of the proviso in Section 11(1) in L.A. Act by the Amendment Act of 1984 the fact that no right has been conferred on the Government to seek a reference under Section 18 may not be a sufficient justification for denial of such a right to a local authority. While it is true that a local authority is not compelled to proceed under the L.A. Act and if it can procure land more cheaply by private negotiations it is certainly at liberty to do so but there may be cases, as in the case of acquisition of land for the Board, where it is permissible for a local authority to take possession of the land which is being acquired under Section 17(1) before the making of the award by the Collector. In such a case the local authority would have no choice but to pay the amount of compensation as determined by the Collector. We have adverted to these aspects not with a view to find fault with the legislative policy underlying the enactment of the proviso in sub-section (2) of Section 50 of the LA. Act but only to highlight the significance of the protection that has been made available to a local authority in the matter of determination of compensation under sub-section (2) of Section 50 of the L.A. Act:

Thus, on an interpretation of the provisions of Section 50(2) of the L.A. Act, it must be concluded that, subject to the limitation contained in the proviso, a local authority for whom land is being acquired has a right to participate in the proceedings for acquisition before the Collector as well as the reference court and adduce evidence for the purpose of determining the amount of compensation and the said right imposes an obligation on the Collector as well as the reference court to give a notice to the local authority with regard to the pendency of those proceedings and the date on which the matter of determination of amount of compensation would be taken up. The recognition of this right raises the question whether the local authority, feeling aggrieved by the determination of the amount of compensation by the Collector or the reference court, can take recourse to any legal remedy. Before dealing with this question we would take note of the decisions of this Court have a bearing on the issue.

In the State of Karnataka, Section 20 of the L.A. Act has been modified by Land Acquisition (Mysore Extension Amendment) Act, 1961 (17 of 1961) and an express provision has been made that the reference court shall serve a notice on the Deputy Commissioner, all persons interested in the reference and, if the acquisition is not made for Government, the reference court shall serve a notice on the person or authority for whom it is made. In *Neelgangabai & Anr. v. State of Karnataka & Ors.*, [1990] 3 SCC 617, the said provision came up for consideration before this Court. Land was acquired for the Hubli-Dharwar Municipal Corporation but no notice as required by Section 20 was issued to the municipal corporation by the reference court which enhanced the amount of compensation. The municipal corporation moved the High Court by filing a writ petition under Article 226 of the Constitution challenging the validity of the civil court's judgment directing higher compensation to be paid. The said writ petition was allowed by the High Court and the said judgment was affirmed in appeal by this Court. It was observed :

"Admittedly the land was acquired for the purpose of the respondent-Corporation and the burden of payment of the compensation is on the Corporation. In this background the High Court has held that it was mandatory for the court of reference to have caused a notice to be served on the respondent-Corporation before proceeding to determine the compensation claim. Since no notice was given to the respondent-Corporation and it was thus deprived of an opportunity to place its case before the court, the judgment rendered in the reference case was illegal and not

binding on the corporation. We are in agreement with this view." (p. 618)

Similarly, in *Krishi Upaj Mandi Samiti v. Ashok Singhal & Ors.*, 1991 Supp. (2) SCC 419, there was a requirement to serve a notice on the person or body for whose benefit the acquisition was made. Such a notice was not served on the *Krishi Upaj Mandi Samiti* by the reference court which enhanced the amount of compensation awarded by the Land Acquisition Officer and the said amount was further enhanced by the High Court which also did not serve a notice on the *Krishi Upaj Mandi Samiti*. The said decision of the High Court was set aside by this Court in appeal and the matter was remitted to the High Court for a fresh disposal in accordance with law after affording a hearing to the *Krishi Upaj Mandi Samiti*. In that case the court did not set aside the award of the reference court, although no notice was served by that court, for the reason that the *Samiti* had accepted and was satisfied with the award of the reference court.

In *Union of India v. Sher Singh & Ors.*, [1993] 1 SCC 608, land was acquired for the purpose of Union of India and Union of India had moved an application before the reference court for being impleaded in the array of the respondents. The said application was rejected by the reference court and the said order was affirmed by the High Court in revision. This Court reversed the said order of the High Court and allowed the application of Union of India for impleadment and held that it was entitled to file an appeal in the High Court against the judgment of the reference court.

In *Union of India v. Kolluni Ramaiah & Ors.*, [1994] 1 SCC 367, acquisition was made under the provisions of the Requisitioning and Acquisition of Immovable Property Act, 1952 for the purpose of Union of India and the arbitrator had enhanced the amount of compensation that was awarded by the competent authority. The said amount was further enhanced in appeal by the High Court. The Union of India was not impleaded as a party to the proceedings either before the arbitrator or before the High Court. The Union of India challenged the judgment of the High Court in this Court. After observing that : "Properly speaking the Union of India ought to have been made a party both before the arbitrator and the High Court" this Court, exercising its powers under Article 142 of the Constitution, remitted the matter to the High Court with the direction that the special leave petitions filed by the Union of India in this Court must be treated as cross-objections before the High Court against the award of the arbitrator.

At this stage we may also refer to two other decisions which, though not relating to determination of the amount of compensation, have a bearing on the locus standi of a local authority for whom land is being acquired to file an appeal against an adverse order of the High Court under Article 226 of the Constitution.

In *The Municipal Corporation of the City of Ahmedabad v. Chandulal Shamaldas Patel & Ors.*, [1971] 3 SCC 821, land was sought to be acquired for the purpose of the Ahmedabad Municipal Corporation. Notifications issued under Sections 4 and 6 were, however, challenged by the land owner before the High Court under Article 226 of the Constitution wherein the Municipal Corporation was also impleaded as respondent but no relief was claimed against it. The said Notifications were quashed by the High Court. The Municipal Corporation filed an appeal to this Court against the said decision of the High Court. A preliminary objection was raised with regard to the maintainability of the said appeal on the ground that the Municipal Corporation was not aggrieved by the said order. The said objection was upheld by this Court on the view that although the property was notified for acquisition by the State Government for use of the Municipal Corporation after it was acquired by the Government, that 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.

In *Himalayan Tiles & Marbles (P) Ltd. v. Francis Victor Coutinho (Dead)* by

Lrs. & Ors., [1980] 3 SCR 235, land was sought to be acquired for the purpose of a company. After the award had been made and the land had vested in the Government and stood transferred to the company the land acquisition proceedings alongwith the notifications under Sections 4 and 6 of the L.A. Act were quashed by the learned Single Judge of the High Court on a writ petition filed by the owner of the land under Article 226 of the Constitution. The Letters Patent Appeal filed by the Company against the said decision of the learned Single Judge was dismissed by the division bench of the High Court on the ground that the company had no locus standi to file the appeal as it was not a person interested within Section 18(1) of the L.A. Act. The said view was reversed by this Court and it was observed :

"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." (p. 240)

This Court further observed that the definition of the word "person interested" must be liberally construed so as to include a body, local authority, or a company for whose benefit the land is acquired and who is bound under an agreement to pay the compensation. According to this Court:

"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." (p. 243)

The Court has taken note of "general consensus of judicial opinion that even though a company may not have any title to the property yet it certainly has a right to appear and put forward its case in the matter of determination of the quantum of compensation" (p.240). The Court has also considered the definition of "person interested" contained in Section 3(b) of the L.A. Act and has held that the company for whom the land is acquired is a "person interested" for the purpose of Section 18(1) of the L.A. Act. The Court appears to have gone into this question for the reason that the Letters Patent Bench in the High Court had held that the company was not a "person interested" within the meaning of Section 18(1) of the L.A. Act. Having regard to the express provision contained in the proviso to Section 50(2) of the L.A. Act, it would not be correct to say that a local authority or a company for whom land is acquired is a "person interested" under Section 18(1) of the L.A. Act because on that view a local authority or a company would be entitled to seek a reference against the award of the Collector which would run counter to the proviso to Section 50(2). It was, therefore, not correct to place reliance on Section 18(1). But the conclusion in Himalayan Tiles's case (supra) that the company had the locus standi to file an appeal is right when the said judgment is read in the context of Section 50(2). For that reason, we are unable to endorse the view taken in Municipal Corporation of City of Ahmedabad v. Chandulal Shamaldas Patel (supra).

We would now revert to the question regarding the legal remedies that are available to a local authority which feels aggrieved by the determination of the amount of compensation by the Collector or by the Reference Court. In this context, it may be stated that the limitation placed by the proviso on the right conferred by Section 50(2) of the L.A. Act cannot be so construed as to deprive the local authority which feels aggrieved by the determination of the amount of compensation by the Collector or by the Reference Court to invoke the remedy under Article 226 of the Constitution

as well as the remedies available under the L.A. Act. The proviso to section 50(2) only takes away the remedy of a reference under Section 18 of the L.A. Act. Examining this question in the context of the proceedings before the Collector we can envisage the following situations :

- (i) No notice was given to the local authority under sub-section (2) of Section 50 of the L.A. Act and as a result the local authority could not appear before the Collector to adduce evidence;
- (ii) Notice was served on the local authority and in response to said notice the local authority appeared before the Collector; and
- (iii) Notice was served on the local authority but inspite of service of such notice the local authority failed to appear and adduce evidence before the Collector.

In a case where no notice is given to the local authority the position of the local authority is not different from that of the Municipal Corporation in *Neelgangabai & Anr. v. State of Kamataka*, (supra). In that case there was an express provision in section 20 of L.A. Act as modified by Land Acquisition (Mysore Extention Amendment) Act, 1961 providing for service of notice on the person or local authority for whom the acquisition is made. On a construction of Section 50(2) we have found that service of such a notice is implicit in the right conferred under Section 50(2) of the L.A. Act, Since the failure to give a notice would result in denial of the right conferred on the local authority under Section 50(2) it would be open to the local authority to invoke the jurisdiction of the High Court under Article 226 of the Constitution to challenge the award made by the Collector as was done in *Neelgangabai* case (supra). In a case where notice has been served on the local authority and it has appeared before the Collector the local authority may feel aggrieved on account of it being denied opportunity to adduce evidence or the evidence adduced by it having not been considered by the Collector while making the award or the award being vitiated by malafides. Since the amount of the compensation is to be paid by the local authority and it has an interest in the determination of the said amount, which has been given recognition in Section 50(2) of the L.A. Act, the local authority would be a person aggrieved who can invoke the jurisdiction of the High Court under Article 226 of the Constitution to assail the award in spite of the proviso precluding the local authority from seeking a reference. Such a challenge will, however, be limited to the grounds on which judicial review is permissible under Article 226 of the Constitution. In a case where the local authority has failed to appear inspite of service of notice the local authority can have no cause for grievance. Even in such a case it may be permissible for the local authority to invoke the jurisdiction of the High Court under Article 226 of the Constitution to assail the award if it is vitated by malafides or is perverse.

We may now come to the stage of the proceedings before the court in a reference under Section 18 of the L.A. Act made at the instance of a person having interest in the land being acquired. At this stage also Section 50(2) of the L.A. Act envisages that the local authority has a right to appear and adduce evidence before the Court. This right is independent of the right that is available to the local authority to appear and adduce evidence before the Collector. Even though the local authority had failed to appear before the Collector inspite of notice or had appeared in response to notice and had adduced evidence the local authority may consider it necessary to adduce evidence to rebut the evidence adduced by the person who has sought the reference and to defend the award made by the Collector. Failure to give notice at this stage would result in denial of the said right of the local authority. Before we consider the remedy that is available for seeking redress against the denial of this right we may examine whether the local authority has a right to be impleaded as a party in the proceedings before the reference court. That raises the question whether the local authority can be regarded as a necessary or a proper

party. The law is well settled that a necessary party is one without whom no order can be made effectively and a proper party is one in whose absence an effective order can be made but whose presence is necessary for a complete and final decision of the question involved in the proceeding. (See: Udit Narain Singh Malpaharia v. Additional Member, Board of Revenue, [1963] Supp. 1 SCR 676, at p. 681. A local authority for whom land is being acquired has a right to participate in the acquisition proceedings in the matter of determination of the amount of compensation while they are pending before the Collector and to adduce evidence in the said proceedings. While it is precluded from seeking a reference against the award of the Collector it can defend the award and oppose the enhancement of the amount of compensation sought before the reference court by the person interested in the land. Moreover the local authority has a right to appear and adduce evidence before the reference court. Having regard to the aforesaid circumstances, we are of the opinion that the presence of the local authority is necessary for the decision of the question involved in the proceedings before the reference court and it is a proper party in the proceedings. The local authority is, therefore, entitled to be impleaded as a party in the proceedings before the reference court.

In case the amount of compensation has been enhanced by the court and no appeal is filed by the Government the local authority if adversely affected by such enhancement may file an appeal with the leave of the court. This right of the local authority does not depend on its being impleaded as a party in the proceedings before the reference court. Even if the local authority is not impleaded as a party before the reference court it can file an appeal against the award of the reference court in the High Court after obtaining leave if it is prejudicially affected by the award. In case the Government files an appeal against the enhancement of the award the local authority is entitled to support the said appeal and get itself impleaded as a party. When the person having an interest in the land files an appeal in the High Court against the award of the reference court and seeks enhancement of the amount of compensation the local authority should be impleaded as a party in the said appeal and it is entitled to be served the notice of the said appeal so that it can defend the award of the reference court and oppose enhancement of the amount of compensation before the High Court. The same will be the situation in case of an appeal to this Court from the decision of the High Court. Under Section 50(2) of the L.A. Act the company for whom land is being acquired is also entitled to appear and adduce evidence for the purpose of determining the compensation. Since the company for whom land is acquired stands on the same footing as a local authority whatever has been said with regard to an local authority would apply to a company. It is, however, made clear that matters which stand finally concluded will not be reopened.

To sum up, our conclusions are :

1. Section 50(2) of the L.A. Act confers on a local authority for whom land is being acquired a right to appear in the acquisition proceedings before the Collector and the reference court and adduce evidence for the purpose of determining the amount of compensation.
2. The said right carries with it the right to be given adequate notice by the Collector as well as the reference court before whom acquisition proceedings are pending of the date on which the matter of determination of compensation will be taken up.
3. The proviso to Section 50(2) only precludes a local authority from seeking a reference but it does not deprive the local authority which feels aggrieved by the determination of the amount of compensation by the Collector or by the reference court to invoke the remedy under Article 226 of the Constitution as well as the remedies available under the L.A. Act.
4. In the event of denial of the right conferred by Section 50(2) on account of failure of the Collector to serve notice of the acquisition

proceedings the local authority can invoke the jurisdiction of the High Court under Article 226 of the Constitution.

5. Even when notice has been served on the local authority the remedy under Article 226 of the Constitution would be available to the local authority on grounds on which judicial review is permissible under Article 226.

6. The local authority is a proper party in the proceedings before the reference court and is entitled to be impleaded as a party in those proceedings wherein it can defend the determination of the amount of compensation by the Collector and oppose enhancement of the said amount and also adduce evidence in that regard.

7. In the event of enhancement of the amount of compensation by the reference court if the Government does not file an appeal the local authority can file an appeal against the award in the High Court after obtaining leave of the court.

8. In an appeal by the person having an interest in land seeking enhancement of the amount of compensation awarded by the reference court the local authority, the should be impleaded as a party and is entitled to be served notice of the said appeal. This would apply to an appeal in the High Court as well as in this Court.

9. Since a company for whom land is being acquired has the same right as a local authority under Section 50(2), whatever has been said with regard to a local authority would apply to a company too.

10. The matters which stand finally concluded will, however, not be reopened.

We may now consider whether in the facts of the present case the Board can be held entitled to any relief. It is not disputed that no notice under sub-section (2) of Section 50 of the L.A. Act was served on the Board either 'by the Special Land Acquisition Officer or by the Tribunal. The Board, however, did not feel aggrieved by the award made by the Special Land Acquisition Officer or by the Tribunal. It felt aggrieved only by the decision of the High Court dated April 18, 1991 in First Appeals Nos. 586, 587 and 641 of 1985 whereby the amount of compensation as determined by the Tribunal was enhanced. The Board does not seem to be aggrieved by the judgment of the High Court dated December 21, 1990 in First Appeals Nos. 584, 585 and 642 of 1985 whereby the High Court has maintained the award of the Tribunal. In these circumstances, it would be just and proper that the Board is heard by the High Court in the appeals filed by the land owners who are seeking enhancement of the amount of compensation awarded by the Tribunal before any such enhancement is made in the said appeals.

We, therefore, allow the applications submitted by the Board for being impleaded as a respondent in the appeals filed by the land owners in this Court and direct that the Board be also impleaded as a respondent in the appeals filed by the land owners in the High Court. The judgment of the Allahabad High Court dated December 21, 1990 in First Appeals Nos. 584, 585 and 642 of 1985 and the judgment of the said High Court dated April 18, 1991 in First Appeals Nos. 586, 587 and 641 of 1985 as well as the order dated January 20, 1993 on the review applications filed against the judgment dated April 18, 1991 are set aside and the said appeals are remitted to the High Court for decision in accordance with law. The appeals are disposed of accordingly. There will be no order as to costs.

R.M. SAHAI, J. The U.P. Avas Evam Vikas Parishad (Uttar Pradesh Housing and Development Corporation) a statutory Board created under the Uttar Pradesh Avas Evam Vikas Parishad Adhinyam, 1965 (U.P. Act No. 1 of 1966) (hereinafter referred to as 'the Act') with power to frame and execute housing scheme and other projects, to plan and co-ordinate various housing

activities and perform other functions as provided in the Act seeks adjudication on the question of law whether the Corporation/Board is a necessary party in proceedings for determination of compensation of the land acquired under the Land Acquisition Act, 1894 (referred as 'the L.A. Act') as amended by the Act.

Facts even though short and simple are necessary to be mentioned, in brief, at this stage only for deciding the issue of non-impleadment of the appellant, a local authority in compensation proceedings. Suffice it to mention that the Board did not appear before the Collector nor any opportunity was sought by it to lead evidence on compensation, as provided by section 50 of the L.A. Act, consequently it was not made a party either before the Tribunal which under the Act is empowered to hear reference against the award made by the Collector or in first appeal in the High Court. What is claimed is that the Board came to known of the decisions of the High Court and of the Tribunal after the claimants filed special Leave Petitions in this Court claiming additional compensation under Section 23(1-A) of the Land Acquisition (Amendment) Act of 1984. Consequently it filed an application before the High Court for recall and review of the order passed by it but the applications having been rejected it has approached this Court by way of these appeals. The Board has also filed application in other Special Leave Petitions filed by the claimants for being impleaded and seeks same relief, namely, setting aside the order of the High Court as it was passed without impleading necessary party. The ground for seeking recall of the order passed by the High Court was founded on the right of the acquiring body, a local authority, to be impleaded as a party in the reference. The entire proceedings are said to be vitiated as in absence of the Board which is a statutory body and which has to pay compensation for the land acquired the proceedings could not have been decided and no order could have been passed adversely affecting it as it has to pay compensation and is statutorily entitled to lead evidence. Non-implementation or failure to give notice amounted to denial of natural justice.

To appreciate the controversy it appears necessary to give, in brief, the provisions of the Act itself to ascertain the nature and duty which the Board is expected to perform, the extent and power it enjoys in acquiring the land and the manner in which such power is to be implemented. As the preamble of the Act shows it was enacted to provide for the establishment and functioning of a housing and development board. Section 15 of the Act prescribes the functions of such Board which includes power to frame and execute housing activities, improvement schemes and other projects and discharge various other functions. Clause (k) of sub-section (1) of Section 15 empowers the Board to acquire moveable and immovable properties for any of the purposes mentioned in the Section. Section 16 provides that the Board may make a housing or improvement scheme on its own motion or at the instance of a local authority. Section 17 provides those matters which could be provided in the scheme. Sections 18 to 27 describe the various types of housing or improvement schemes which the Board may undertake. Section 28 requires the Board to give notice of the scheme by publication in Gazette and two daily newspapers having circulation in the area comprised in the scheme. Sub-section (3) of Section 28 requires the Housing Commissioner to deliver copy of the map, details of land proposed to be acquired to any person who applies for the same. Section 29 requires the Board to serve notice within six weeks of the publication of notice under section 28 on classes of persons whose land is to be acquired intimating them that the Board proposes to acquire the land. Section 30 entitles the person concerned to file objection and under Section 31 the Board may after giving opportunity of hearing to the objector either abandon the scheme or sanction it and if the scheme exceeds Rs. Twenty lakhs then submit to the State Government for sanction with such modifications as the Board may suggest. Section 32 requires the Board to notify the scheme as sanctioned by the Board or the State Government. The effect of such notification under Section 32 is that the scheme comes into force from the date of the notification.

For purposes of acquiring land to implement the notified scheme the Act empowers the Board to take action under L.A. Act to the extent it is modified by the Act. Section 55 of the Act is extracted below :

"55. Power to acquire land - (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, 1984 (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) If any land in respect of which betterment fee has been levied under this Act is subsequently required for any of the purposes of this Act, such levy shall not be deemed to prevent the acquisition of the land under the Land Acquisition Act, 1894 (Act No. 1 of 1894)."

The modifications in the L.A. Act by the Schedule are reproduced to the extent they are relevant :

"2. Effect of notices under this Act. - (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, of 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 the said Act shall be inapplicable in the case of such land.

(2) The issue of a notice under clause (c) of sub-section (3) of Section 23 of this Act in the case of land acquired under a Bhavi Sarak Yojana and the publication of a notification under sub-section (1), or as the case 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 be 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) In a case to which sub-paragraph (1) or sub-paragraph (2) applies, a notification under sub-section (2) of Section 33 or under sub-section (3) of Section 49 of the Act involving alteration of the extent of the land proposed to be acquired shall have the effect of correspondingly modifying the notification under sub-section (1) of Section 4 and declaration under Section 6 of the said Act, so, however, that any such modification shall be without prejudice to the validity of anything previously done under the original notification or declaration."

"5. Amendment of Section 23 of the said Act - In Section 23 of the said Act -

(i) for existing explanation to the clause "firstly", the following shall be deemed to be substituted :

"Explanation - In judging the market value aforesaid in any case where a land is acquired under a housing or improvement scheme under the Uttar Pradesh Avas Evam Vikas Parishad Adhiniyam, 1965, if any building has been erected, re-erected, added or altered in contravention of the provisions of clause (a) of sub-section (3) of Section 23, sub-section (3) of Section 24 or Section 35 of the said Adhiniyam, any increase in the market value resulting from such erection, re-erection, addition or alteration shall be disregarded.";

(ii) after the existing sub-section (1) the following shall be added as sub-section (2), namely -

"(2) In addition to the market value of the land as above provided, the court shall in every case award a sum of fifteen percentum of such market value in consideration of the compulsory nature of the acquisition."

The acquisition as is clear from Section 55 of the Act is under the provisions of the L.A. Act except to the extent it has been modified by the Schedule. Proceedings under Section 28 and notification under Section 32 are analogous to Sections 4 and 6 of the L.A. Act. But once notification under Section 32 of the Act has been issued it is the L.A. Act which comes into operation. The Collector takes over for acquisition under Section 7 of the L.A. Act for marking out, measuring and planning under Section 8 and issuing notices under Section 9 to the persons interested intimating them that the Government intends to take possession and claims for compensation may be made to him who after making enquiries is required to make award under Section 11 of the L.A. Act. But for reference to the Court against the award the Act has made a departure and provided for creation of Tribunal under Section 64 of the which is reproduced below :

"64. Functions and constitution of Tribunal - (1) The State Government may, by notification in the Gazette, constitute one or more Tribunals for the purposes of -

(a) performing the functions of the Court with reference to the acquisition of land for the Board under the Land Acquisition Act, 1894 (Act No. 1 of 1894), as modified by the Schedule to this Act;

(b) determining, in case of dispute and on reference in the prescribed manner the compensation payable by the Board under the various provisions of this Act;

(c) deciding appeals relating to levy or assessment of betterment fee;

(d) deciding appeals under Sections 36 and 37; and

(e) deciding such other matters as may be prescribed.

(2) The Tribunal shall exercise jurisdiction with respect of such area as may be specified in the notification under sub section (1).

(3) The Tribunal shall consist of a civil judicial officer not below the rank of District Judge.

Explanation - The expression "District Judge" includes an additional District Judge.

(4) Except as otherwise provided by or under this Act, the Tribunal shall have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 (Act No. VI of 1908), shall follow the same procedure as laid down in that Code, and shall be deemed to be a civil court within the meaning of Sections 480 and 482 of the Code of Criminal Procedure, 1898 (Act No. V of 1898), and any proceeding before the tribunal shall be deemed to be a judicial proceeding within the meaning of Sections 193 and 228 of the Indian Penal Code (Act No. XLV of 1860).

(5) The judicial officer appointed as Tribunal shall be paid such remuneration as may be prescribed.

(6) The Tribunal may, with the previous sanction of the State Government, appoint such officers and servants as it considers necessary for the conduct of its business, and the remuneration and other conditions of service of such officers and servants shall be such as may be prescribed.

(7) The remuneration payable to the judicial officer appointed as Tribunal and other officers and servants of the Tribunal shall be paid out of the fund of the Board."

The award by the tribunal becomes an award of the Court under L.A. Act as is clear from Section 66(1) of the Act which is extracted below:

"66. Finality of decisions of Tribunal - (1) An award of the Tribunal in a case relating to the acquisition of land under the Land Acquisition Act, 1894 (Act No. 1 of 1894), as modified by the Schedule to this Act, shall be deemed to be an award of the court under that Act and shall, subject to the provisions of Section 54 of that Act, be final.

(2).....".

It is thus clear that except for certain modifications and the constitution of a tribunal for purposes of deciding the reference the entire proceedings are taken under the L.A. Act. The Act does not provide the procedure in accordance with which the tribunal has to function except that it shall have the powers as are vested in the civil court. Section 64(b) no doubt provides for determining in case of dispute and on reference in the prescribed manner the compensation payable by the Board but the rules which have been framed in exercise of power under Section 94 of the Act have not provided any procedure as to how the reference has to be heard and what procedure has to be followed. The Act is thus silent on affording any opportunity of hearing to the Board while hearing the reference under Section 64 of the Act.

Before proceeding further it would be appropriate to examine the decisions of this Court on this aspect. In *Himalaya Tiles and Marble (P) Ltd. v. Francis Victor Countinho (dead) by Lrs*, AIR 1980 SC 1118 this Court expanded the meaning of expression 'person interested' in Section 18 of the L.A. Act and construed it to include a person who is required to pay compensation. It was held,

"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 to claim or tide 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."

Support was drawn by the Bench for this from *Sunder Lal v. Paramsukhdas*, [1968] 1 SCR 362 where observations were made to the following effect :

"It will be noticed that it is an inclusive definition. It is not necessary that in order to fall within the definition a person should claim an interest in land, which has been acquired. A person becomes a person interested if he claims an interest in compensation to be awarded. It seems to us that *Paramsukhdas* is a "person interested" within Sec. 3(b) of the Act because he claims an interest in compensation....."

The context in which these observations were made were entirely different. Land of one *Sunder Lal* was acquired. *Khushal Singh* was a lessee. In proceedings for compensation *Khushal Singh* also staked his claim. It was accepted. One *Paramsukhdas* in the meantime had obtained a decree against *Khushal Singh*. He, therefore, made an application that he may be impleaded

and' the amount of compensation determined to be paid to Khushal Singh may be paid to him in satisfaction of his money decree. It was in this context that the Court observed,

"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 Sec. 21. He was accordingly entitled to be made a party....."

This observation by the Court made in entirely different context could not have been extended to a case like Himalaya Tiles (supra). The observation that the words 'person interested' is inclusive definition cannot be disputed. But with profound respect to the Bench in Himalaya Tiles the words 'person interested' used in Section 18 were read in isolation. In fact this expression derives its colour from Section 9 which requires the Collector to issue notice to 'persons interested'. In Section 9 it means only those who are either owners or in any manner interested in compensation for the land. No different meaning could be given to it in Section 18. It could not be construed reversely. That is including not only those persons who were interested in compensation but even those who were opposed to compensation. In Union of India v. Sher Singh & Ors., JT (1993) SC 693 wherein it was held that the 'person interested' in Section 18(1) of the L.A. Act. should be construed liberally so as to include a body, local authority or a company for whose benefit the land was acquired under who was bound under the agreement to pay the compensation. The Bench mainly relied on the decision on Himalaya Tiles (supra) which has been adverted earlier. It is not necessary to advert to various decisions rendered by the High Court of Punjab and Haryana either in Full Bench or Division Bench to which reference is made. But it is necessary to advert to Neelgangabai v. State of Karnataka, [1990] 3 SCC 617 which was referred and followed by the Bench in Sher Singh (supra) as the decision given by the Karnataka High Court that in Land Acquisition proceedings it was necessary to give notice to the acquiring body was taken to be laying down correct law as it was approved by this Court as well. In that decision even though the reference was decided on the basis of consent of the land owners and the State yet the order was set aside by the High Court in writ petition and it was held that since the land was acquired for purposes of the corporation and the burden of payment of compensation was on it it was necessary to issue show cause notice on it. But the reason for the taking the view was not burden of compensation as understood by the Bench in Sher Singh (supra) but the statutory provision of Section 20 of the L. A. Act as applicable to the State of Karnataka. It is reproduced below :

"20. service of notice - The court shall thereupon cause a notice, specifying the day on which the court will proceed to determine the reference, and directing their appearance before the court on that day, to be served on the following persons, namely : -

- (a) the Deputy Commissioner;
- (b) all persons interested in the reference; and
- (c) if the acquisition is not made for government, the person or authority for whom it is made."

The decision was thus rendered on specific provision of the Act and this important finding does not appear to have been brought to the notice of the Court. What is necessary to be mentioned is that the Bench deciding the case of Neelgangabai (supra) did not base its decision on Himalaya Tiles (supra) as in view of clear provisions in clause (c) for issuing notice to the authority for whom the acquisition was being made it did not consider it necessary to enter into any other controversy. The decision thus turned on specific provisions of the Karnataka Act and no assistance could have been derived from it for deciding if issuing of notice to acquiring body

was mandatory in every case where the land was acquired for company or local authority. Similarly in *Krishi Upaj Mandi Samiti v. Ashok Singhal & Others*, [1991] Supp. 2 SCC 419 Section 54 of the *Krishi Upaj Act* required notice to be issued to persons interested which included the body for which the land was being acquired and, therefore, it was conceded before this Court that the Judgment given by the High Court was liable to be set aside as it was rendered in violation of the mandatory provisions of the Act. No such local amendment to the L.A. Act appears to have been made by the State of Haryana. Yet the Bench relying on the ratio mainly in *Himalaya Tiles* (supra) and the two decisions one, on the Karnataka Act and the other under *Krishi Upaj Mandi Samiti Adhiniyam*, was of the view that no reference by the Court could be decided without impleading the acquiring body as party to the proceedings. The decision thus rendered in *Union of India v. Sher Singh* (supra) does not lay down the correct law. Nor the interpretation in the *Himalaya Tiles* based on construction of the expression 'persons interested' under Section 18(1) without adverting to Section 9 or any other principle of law can be said to lay down correct law.

Having dealt with the decisions and noticed their peculiar features the principal issue may be reverted whether there is any provision from which it can be inferred that a local authority much less an acquiring body is a necessary or even a proper party whose impleadment is necessary and failure to do so vitiates the proceedings. Allied to this is the issue whether even in absence of such provision can the local authority be impleaded on principle of nature justice or fair hearing and if this be so then to what extent it is available and how far it affects the proceedings. The relevant provisions of the Act which are silent on this aspect have already been noticed. There is no express provision for impleading the acquiring body or local body in the compensation proceedings. Award is made by the Collector under Section 11 of the L.A. Act whereas reference is heard and decided under Section 64 of the Act. No notice or opportunity of hearing is contemplated at either stage to the Board or to put it more precisely the acquiring body. At the award stage it is the Collector who is directed to take over under directions of the appropriate authority. From the publication of notification under section 32, that is Section 6 of the L.A. Act, till making of the award, determining compensation and taking over possession every proceeding is between Collector and the claimant or the person interested. The Collector acts for and on behalf of the Government as the acquisition is at the instance of the Government. The Act does not contemplate presence or absence of the acquiring body in the proceedings taken by the Collector, except of the local authority to limited extent which shall be referred presently. Inquiry under the L.A. Act for determination of compensation is contemplated both at the stage of making of award by the Collector under Section 11 or Court under Section 18 of the L.A. Act and Section 64 of the Act. The scope of the inquiry under Section 11 of the L.A. Act is confined to the objections, if any, filed by the persons interested in pursuance of the notice issued under Section 9 of the L.A. Act. Who such person is and what objections can be filed by him are mentioned in Section 9 itself. Section 9 read as under :

"S.9. Notice to persons interested - (1) The Collector shall then cause public notice to be given at convenient places on or near the land to be taken, stating that the Government intends to take possession of the land, and that claims to compensation for all interests in such land may be made to him.

(2) Such notice shall state the particulars of the land so needed, and shall require all persons interested in the land to appear personally or by agent before the Collector at a time and place therein mentioned (such time not being earlier than fifteen days after the date of publication of the notice), and to state the nature of their respective interests in the land and the amount and particulars of their claims to compensation for such interests, and their objections (if any) to the measurements made under Section 8. The Collector may in any case require such statement to be made in writing and signed by the party or his agent.

(3) The Collector shall also serve notice to the same effect on the occupier (if any) of such land and on all such persons known or believed to be interested therein, or to be entitled to act for persons so interested, as reside, or have agents authorised to receive service on their behalf, within the revenue district in which the land is situate.

(4) In case any person so interested resides elsewhere, and has no such agent, the notice shall be sent to him by post in a letter addressed to him at his last known residence, address or place of business and registered under Sections 28 and 29 of the India Post Office Act, 11898."

Sub-section (1) itself makes it clear that an interested person is one who has an interest in the land which is intended to be taken possession of by the Government. This has been extended by sub-section (3) even to occupiers of land. An acquiring body cannot by stretching of language be deemed to be person interested within Section 9 of the L.A. Act. It further stands clarified by sub-section (2) as the particulars mentioned in the notice by the Collector on which a person interested is required to stake his claim in" his respective interest in the land and the amount and particulars of claim on compensation and to measurement of land under Section 8. The provision does not even remotely apply to an acquiring body. Section 10(1) further throws light on it. It is extracted below : S.10(1) Power to require and enforce the making of statements as to means and interests - The Collector may also require any such person to make or deliver to him, at a time and place mentioned (such time not being earlier than fifteen days after the date of the requisition), a statement containing, so far as may be practicable the name of every other person possessing any interest in the land or any part thereof as a co-proprietor, sub-proprietor, mortgagee, tenant or otherwise, and of the nature of such interest, and of the rents and profits (if any) received or receivable on account thereof for three years next preceding the date of the statement."

It again emphasises person interested to be a person having interest in the land who is entitled to receive compensation. After the objections are filed by the persons interested an inquiry is held by the Collector and award is made under Section 11 of the L.A. Act. Section 11 as extracted below ;

"S.11. Enquiry and award by Collector - (1) On the day so fixed, or on any other day to which the enquiry has been adjourned, the Collector shall proceed to enquire into the objections (if any) which any person interested has stated pursuant to a notice given under Section 9 to the measurements made under Section 8, and into the value of the land at the date of the publication of the notification under Section 4, sub-section (1), and into the respective interests of the persons claiming the compensation and shall make an award under his hand of -

- (i) the true area of the land;
- (ii) the compensation which in his opinion should be allowed for the land; and
- (iii) the apportionment of the said compensation among all the persons known or believed to be interested in the land, of whom, or of whose claims, he has information, whether or not they have respectively appeared before him."

Provided that no award shall be made by the Collector under this sub-section without the previous approval of the appropriate Government or of such officer as the appropriate Government may authorise in this behalf.:

Provided further that it shall be competent for the appropriate Government to direct that the Collector may make such award without such approval in such class of cases as the appropriate Government may specify in this

behalf.

(2) Notwithstanding anything contained in sub-section (1), if at any stage of the proceedings, the Collector is satisfied that all the persons interested in the land who appeared before him have agreed in writing on the matters to be included in the award of the Collector in the form prescribed by rules made by the appropriate Government, he may, without making further enquiry, make an award according to the terms of such agreement.

(3) The determination of compensation for any land under subsection (2) shall not in any way affect the determination of compensation in respect of other lands in the same locality or elsewhere in accordance with the other provisions of this Act.

(4) Notwithstanding anything contained in the Registration Act, 1908 (16 of 1908), no agreement made under sub-section (2) shall be liable to registration under that Act."

The scope of inquiry is confined to the objections raised under Section 9 of the L.A. Act. The acquiring body does not figure anywhere. There is no Us between acquiring body and the Collector. The Collector acts for and on behalf of the acquiring body. No adversarial lis arises between the two. The acquiring body is not a person interested within meaning of Sections 9 and 10. Even the award that is made under Section 11 is in respect of the land for which objection was raised. When the statute does not permit an acquiring body to raise objection, if any, it cannot claim to be party. An award made under Section 11 is made final and conclusive under Section 12 between the Collector and the persons interested. It can be reopened under Section 12A to the limited extent mentioned therein. If the acquiring body is permitted to claim that it too is covered in the person interested, it would not only destroy the legislative conclusiveness visualised to an award but result in uncertainty of the proceedings till the end.

Same conclusion follows from Sections 18, 19 and 20 of the L.A. Act which deal with reference to the Court, the person to whom notice has to be issued and the matters which have to be decided. Sub-section (1) of Section 18 is extracted below : -

"S. 18. Reference to Court. - (1) Any person interested who has not accepted the award may, by written application to the Collector, require that the matter be referred by the Collector for the determination of the Court, whether his objection be to the measurement of the land, the amount of the compensation, the persons to whom it is payable, or the apportionment of the compensation among the persons interested."

The right to seek reference is a limited right to the person interested who has not accepted the award. The person interested in the Section cannot mean any one other than the one who is visualised in Sections 9 and 10 of the L.A. Act. The scope of reference under Section 18 is the same as under Section 11. Therefore, person interested cannot have any meaning different than what it is under Sections 9 and 10. Section 19 prescribes the procedure when an objection is made to the award. It requires the Collector that in making the reference he shall state for information of the Court, (a) the situation and extent of the land, with particulars of any trees, buildings or standing crops thereon; (b) the names of the persons whom he has reason to think interested in such land; (c) the amount awarded for damages and paid or tendered under Sections 5 and 17, or either of them, and the amount of compensation awarded under Section 11; and (d) if the objection be to the amount of the compensation, the grounds on which the amount of compensation was determined. Section 21 restricts the scope of proceedings to, 'the scope of the enquiry in every such proceeding shall be restricted to a consideration of the interests of the persons affected by the objection'. It is thus clear that an acquiring body is not contemplated to be impleaded or made a party as the proceedings, whether at the stage of

inquiry by the Collector and making of award or when the matter is pending in the Court in reference, are between the Collector and the person interested and not the acquiring body.

Why it is so that no provision is made for giving any notice or hearing to the acquiring body for whom the land is acquired. The reason is that whenever a company, an industrial unit or any Government department needs any land for any purpose it moves the Government and it is after examination of the proposal made by the person concerned that a decision is taken whether the land should be acquired or not and, thereafter so far the acquiring body is concerned it is not required to be impleaded in the proceedings as under the Act it is duty and responsibility of the Collector/Land Acquisition Officer to take up the matter, proceed in accordance with the procedure provided under the Act and determine compensation payable to the claimant. That is why the Act permits only the claimant or person interested in determination of compensation to seek a reference. In reference it is not the validity of the notification which is in issue but the only lis is about the amount of compensation and, therefore, again the person for whose benefit the land is acquired is not required to be impleaded or given any notice. It is appropriate to reproduce Section 50 of the L.A. Act at this stage :

"50. Acquisition of land at cost of a local authority or company -

(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 proceeding 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."

This Section enables a local authority to appear and adduce evidence for purpose of determining compensation. It has been permitted to participate for a limited purpose only as is apparent from the report of the Select Committee of 23rd March 1893 which is extracted below :

"To Section 50 we have added at the desire of the Government of Bombay a clause permitting the appearance before the Collector or the Court, of the representative of a Local Authority or Company on whose behalf land is being acquired. We can not, however agree that the authority should be permitted to appeal from the Collector's award. We have not given to Government itself power to make this appeal because the Collector is only the agent of Government in the acquisition of land: his action is taken under the rules laid down for his guidance which include a preliminary valuation and these rules ordinarily provide, and ought to provide, that when the Collector finds cause to anticipate that his eventual award will substantially exceed his provisional estimate he shall stay proceedings till he receives the further instructions of higher authority. No local authority or company is compelled to prove under the Land Acquisition Act. If it can procure land more cheaply by private negotiation it is certainly at liberty to do so but it elects to set in motion the very special power given to Government or if the public objects, it can expect no higher privileges and powers than those given to Government itself."

But option to participate does not mean right to be impleaded. When the Legislation precludes such person from being made a party obviously because the Collector acts on its behalf then such a person cannot claim it as a matter of right. Permitting participation of the local authority for the limited purpose visualised by sub-section (2) of Section 50 cannot be stretched to make the local authority a necessary party by giving extended

meaning to the expression 'person interested' used in Section 18 of the L.A. Act. No provision in the local Act makes the Board a necessary party. It only empowers it to assist the Collector or Court in determining compensation by adducing evidence. A person is impleaded or can claim to be impleaded if it has any interest or lis. An acquiring body including the local authority has no lis except to assist the Collector or the Court in determining compensation. The Legislative anxiety to preclude any such person from being impleaded is clearly brought out by the proviso to sub-section (2) of Section 50 as it specifically debar the local authority or the company from demanding any reference. The determination of compensation by the Collector is final and conclusive under Section 12 of the L.A. Act as between the Collector and the persons interested. This as explained earlier, is subject to provisions of the L.A. Act. And those provisions are Section 12A, 18 or appeal etc. It cannot be disturbed at the instance of the local authority. In *Udit Narain Singh Malpaharia v. Additional Member Board of Revenue, Bihar*, AIR (1963) SC 786 this Court observed thus,

"To answer the question raised it would be convenient at the outset to ascertain who are necessary or proper parties in a proceeding. The law on the subject is well settled : it is enough if we state the principle. A necessary party is one without whom no order can be made effectively; a proper party is one in whose absence an effective order can be made but whose presence is necessary for a complete and final decision on the question involved in the proceeding."

A local authority is not even a proper party in the sense that the court or the claimant or the interested person seeking reference or filing appeal are not required to implead them as in absence of their appearance and leading any evidence their presence is immaterial for complete and final decision of the proceedings.

Absence of any provision for impleading acquiring body appears to be based on equity and justice. A company or local authority seeking acquisition of land and displacing an individual is more concerned with the land. Compensation no doubt has to be paid by it but the Legislature being aware of that its determination is on the date the notification is issued under Section 4 of the L.A. Act and the long delay it takes in court it considered it just and proper to exclude impleadment of acquiring body as it was not only unnecessary but even unfair as it might result in delay to the prejudice of the owner of the land. Between the date when notification is issued and the date when possession is acquired the value of the land goes up but the land owner does not get any benefit of it whereas the acquiring body by paying the value of the land determined at least three years earlier after amendment, gets the land which becomes more valuable. Further the acquiring body is permitted to appear and adduce evidence. But if one does not exercise the option the Legislature does not grant any further indulgence. If some one is interested in appearing before the Court to assist in determination of compensation, the Court may permit it. An acquiring body may have locus to appear on its own but so long it does not appear it is not a necessary party the non-impleadment of which vitiates the proceedings. Between the locus and right of impleadment there is world of difference. The two cannot be equated. A person having locus may not be denied appearance but a person who is necessary party cannot be denied impleadment. The former is permissive the latter is mandatory. A local body may have locus to appear for the limited purpose purpose but once it opts to keep out it cannot claim to be necessary party whose non-impleadment renders the proceedings invalid. More important than this is the grave injustice involve in such construction. An acquiring body or a local authority cannot be permitted to sit on the fence wait and watch and then appear after finalisation of compensation to claim that it may be permitted second innings as it would result in undue advantage to the stronger party between the two and ruinous to the weaker. He who after waiting and fighting for the compensation for years in the courts, which takes considerable time, is faced with the danger of being reduced to naught and face the litigative process once again. His land is gone, compensation is

not paid, and above all courts hazard are once more thrust on him. Many may not be able to stand the strain. The real worth of the compensation already devalued, the expenditure in the court having ruined him it would not be just and proper to set aside the order at the instance of a person who is not a necessary party and for whose impleadment there is no provision in the L.A. Act and for which neither he is responsible nor the court and above all who having been given right to participate chose to be a watcher only.

The submission advanced on behalf of the appellant that it being statutorily entitled to lead evidence it was incumbent on the Collector and the Court to issue notice to it and if they failed to discharge their obligation the appellant was entitled to challenge the determination of compensation in higher court by filing appeal or writ petition under Article 226 of the Constitution of India was under complete misapprehension. Right to notice in proceedings in court of law or quasi-judicial proceedings are different than the right of appeal. The former may arise either under the statutory provision or the principle of natural justice may require it or it may be necessary on principle of legitimate expectation. That shall be adverted later. But right of appeal is always statutory. The courts cannot confer or infer it. The report of the Select Committee has already been extracted. Its recommendation was against granting any right of appeal or reference to a local authority or company. The recommendation found expression in sub-section (2) of Section 50. The specific bar against seeking reference brings out the legislative intention of precluding the local authority from filing any appeal against determination of compensation by the Court. What is legislatively not permitted cannot be read by implication. Not in respect of right of appeal as it, 'is a creature of Statute' *Shankar Kerba Jadhav & Ors. v. The State of Maharashtra*, [1969] 2 SCC 793. 'A right of appeal is conferred by statute or equivalent legislative authority; it is not a mere matter of practice or procedure, and neither the superior nor the inferior court or tribunal nor both combined can create or take away such a right'. (Halsbury's Laws of England Vol. 37 Para 677). Granting right of appeal to local authority against order of reference court would be legislating and not interpreting. Nor a writ petition can be held to be maintainable for enforcing right to participate where the local authority did not appear even though it had knowledge or it was informed but opted to remain absent. It may be available in those exceptional cases where the proceedings are found to be vitiated by fraud or collusion.

Thus the local authority is neither a necessary nor a proper party in the proceedings for compensation under the L.A. Act. Therefore, the non-impleadment of the appellant was not fatal and the proceedings could not be said to be vitiated for failure to implead it. This answers the issue raised on behalf of the appellant, the local authority. But what is of some concern is noticeable lack of objective assessment of compensation, at times, when the acquisition is for a local authority. When sub-section (2) of Section 50 was enacted acquisitions were not many. Price of land, too, was not very high. But with multiplication of local bodies constituted under various State Acts to carry out development activities resulting in large scale acquisition coupled with rise in the market value of land the provisions in the statute have to be so interpreted as to eliminate, as far as possible, any chance of injustice and fairness specially to a public body as in such matters it ultimately recoils on the society. As is clear from the Select Committee's report, extracted earlier, the Legislature was aware, even then, that an exception was to be made in favour of a local authority or company as, at times, such authority may be in a better position, than the Collector, to bring evidence on record which may be of assistance in determination of compensation. It has become more necessary, in the present day, as the acquisition proceeding under various local acts till the stage of issuing notification analogous to Section 6 of the L.A. Act are taken under the local Act. And the Collector takes over, as in the case of appellant, from the stage of Section 7 of the L.A. Act. Further in such acquisitions namely for the Local body there is absence of any

personal involvement. And the possibility of best evidence being withheld or prevented from coming on record due to vested interest, the number of which is growing every day cannot be ruled out. What, therefore, requires examination is that even though the right of impleadment or appeal was not allowed to the local body and what was assured was an option to participation only, is there any principle on which this assurance can be given legal shape. If so in what circumstances and on what conditions. But before proceeding further it is necessary to be clarified that if in any proceeding for determination of compensation initiated earlier the local authority appeared and led evidence then it was required to be impleaded in subsequent proceedings. The right of impleadment after appearance is founded on the principle that the person aggrieved by the order must have the remedy in the higher court. For instance if the local authority lead evidence before the Collector or the Court for determination of compensation and that evidence is totally ignored then even though such a person had no Us against the Collector but there being conflict of interest between person interested and the person entitled to lead evidence such a person would be entitled to claim in higher court that the order was violative in law, for non-consideration of material on record.

Coming back to the issue, what flows from the entitlement to lead evidence? The principle of natural justice, as a part of procedural law, developed by this Court and English courts had been applied and extended to quasi-judicial proceedings and administrative matters to ensure that no one is adversely affected without reasonable opportunity and fair hearing. No order can be passed without hearing a person if it entails civil consequences. But what about those situations where, as in the present case, the Legislature stops short by providing an option to appear only. The local body cannot claim to be impleaded as a matter of right. Nor it can invoke the principle of Natural justice. Yet it is entitled to lead evidence. It may or may not. Latter does not present any difficulty. But if it intends to lead evidence then no mechanism has been provided to enable it to exercise its option. In situations where even though a person has no enforceable right yet he is affected or likely to be affected by the order passed by a public authority the courts have evolved the principle of legitimate expectations. The expression which is said to have originated from the judgment of Lord Denning in *Schmidt v. Secretary of State for Home Affairs*, (1969) 2 Ch. 149 is now well established in public law. In *Attorney-General of Hong Kong v. Ng Yuen Shiu*, (1983) 2 A.C. 629 Privy Council applied this principle where expectations were, 'based upon some statement or undertaking by or on behalf of, the public authority', and observed, 'Accordingly "legitimate expectations" in this context are capable of including expectations which go beyond enforceable legal rights, provided they have come reasonable basis'. 'A person may have a legitimate expectation of being treated in a certain way by an administrative authority even though he has no legal right in private law to receive such treatment' (Halsbury's Laws of England Vol. 1(1) 4th Edn. Re-issue Para 81). Fair procedure and just treatment is the core of our jurisprudence. No one should suffer for omission in law or technicalities in rules. Therefore when the law permits the local body to lead evidence then it is implicit in it that the local authority can legitimately expect to be informed or intimated of the proceedings. It would be in consonance with principle of fairness. Otherwise the right to lead evidence shall hand on the oft chance of the authority having come to know of the proceedings. In English cases referred earlier inference was drawn on existence of such right as it would have otherwise worked harshly against the person who was affected even though there were no legal provisions or rules permitting any hearing. Sub-section (2) of Section 50 stands on a higher footing. It entitles the local body to lead evidence. This furnishes reasonable basis to infer that the local body legitimately expects to be informed or intimated of the proceedings. It is an assurance in law of intimation about pendency of the proceedings. How else it is going to exercise the right of assisting in determination of compensation. The entitlement to lead evidence in absence of intimation may, at times, turn out to be empty formally. Consequently the Collector and the Court are impliedly obliged to intimate the local

authority about the pendency of the proceedings and its right to lead evidence. The expression, 'may appear and adduce evidence' can be effective and meaningful, only, if the person who is entitled to lead evidence is either aware or made aware of it. If such a person is aware and does not choose to appear then it may be said that it cannot at a subsequent stage claim that even though it was aware and did not appear yet the order against it may be set aside as it should have been made aware. But if he is not aware and if he would have been made aware then he would have led evidence which would have assisted the authority in determination of compensation could be possible only if such person is informed or intimated of the proceedings. Therefore, to obviate any dispute in future proceedings it appears appropriate to hold that even though the language of the Section does not provide for issuance of any notice it is incumbent on the Collector or the Court while determining compensation to intimate the local body by issuing notice to lead evidence, if any. The submission that the local authority must be presumed to know would not be in consonance either with principle of fairplay or with legislative objective of permitting such body to appear and lead evidence. But if the local body does not appear even after intimation by the Collector or the Court then it shall have no right to claim that the order may be set aside as it was not impleaded as a party. In *Santosh Kumar v. Central Warehousing Corporation*, AIR (1986) SC 1164 it was held that the company or the local authority at whose instance the acquisition is made is not entitled to challenge the determination of compensation except on the ground of fraud, corruption or collusion, therefore, it is in the interest of the person whose land has been acquired that the necessary intimation should be given to the acquiring body at the earliest so that it may not raise the plea of fraud, corruption or collusion after conclusion of the proceedings either before the Court or in appeal. But the obligation of the Collector or the court to issue notice shall be prospective in operation. That is it shall apply to only those proceedings which are initiated hereinafter or are pending before the Collector or Court. It shall not be available in appeals pending against the order passed in reference in High Court or this Court except in those rare cases where the local authority is able to establish that it had no knowledge about the proceedings at any stage and the proceedings were vitiated because of fraud or collusion.

The conclusions, thus, that can be drawn from the discussion may be summarised as under :

- (i) An acquiring body including local authority or company is not a necessary party either before the Collector who makes the award or before the Court which hears the reference.
- (ii) Any proceeding for determination of compensation is not vitiated nor is liable to be set aside for non-impleadment or non-issuance of notice to the acquiring body, including local authority or the company.
- (iii) (a) The Collector and the Court hereinafter shall be under an obligation to intimate the local authority or the company of pendency of the proceedings to enable it to lead evidence.
(b) Non-appearance by the local authority or company in pursuance of notice sent by the Collector would not absolve the reference court from issuing any notice.
- (iv) (a) If a local authority or company appears in proceedings and leads evidence as provided by sub-section (2) of Section 50 in proceedings which were initiated earlier it shall be made party in subsequent proceedings and its non-impleadment shall render the proceedings as invalid.
(b) But if the local authority or the company on whom notice was served or it had knowledge of the proceedings but it did not appear then it shall not be entitled to claim at later stage or in appeal that the proceedings were vitiated due to its non-impleadment.

(v) Any proceeding taken under the L.A. Act as amended by the State law or if specifically provided in the State enactment under which the land is being acquired providing for issuance of notice or giving an opportunity of hearing is required to be followed and if such notice is not issued or hearing is not afforded then the proceedings as in the Karnataka Act or in the Krishi Upaj Mandi Samiti Adhiniyam referred to earlier are liable to be set aside.

(vi) In appeal pending in the High Court or this Court the local authority or the company shall not be entitled to claim setting aside of the order except if it establishes fraud or collusion. No order shall be set aside on the ground if it is only in the realm of appreciation of evidence.

Law having been decided it appears necessary to refer to the facts as it shall demonstrate that how unfair it would be if such construction as is claimed by the Board is placed on the provisions of the L.A. Act. A scheme was notified by the Avas Vikas Parishad Adhiniyam, 1965 called Trans Yamuna Grihsthan and Sarak Yojana, Agra. It was a combination of a housing accommodation and street scheme. The finalised scheme was published under Section 32 of the Adhiniyam and the land of the owners was notified to be acquired. An award was made by the Land Acquisition Officer who adopted belting system for determining the market value and divided the land covered by the award into three belts fixing definite amount for each belt. In reference, the Tribunal determined the market value and enhanced the compensation. The High Court in first appeal doubled it nearly. It also awarded solatium at the rate of 30% on the amount of enhanced compensation and interest at the rate of 12% under sub-section (1-A) of Section 23 of the L.A. Act. The High Court decided the appeal on 18th April 1991. The owners were still not satisfied and consequently filed the special leave petitions in this Court, for grant of interest under Section 23-A added to the L.A. Act in 1984. The Board claims to have come to know of these proceedings after the judgment of the High Court and filing of special leave petitions by the claimants and, therefore, it move applications under Section 114 and Order 47 Rule 1 read with Section 151 of the Code of Civil Procedure before the High Court for the review of its order. The application was dismissed on 3rd December 1992 as it was filed after long delay without proper explanation and even the court fee paid was deficient. The High Court observed that even though this was brought to the notice of the learned counsel for the Board yet the deficiency was not made goods. Another effort was made in 1993 but the Court refused to recall its order as it was not disputed that the court fee was not made good for long time and even no application as contemplated under section 149 of the C.P.C. for extension of time was made.

Facts speak for themselves. Preliminary notification was issued on 31st of January 1971. Notification under Section 32 analogous to Section 6 was issued in 1974. Award was made on 15th April 1978. Possession was taken on 27th of April 1978. Reference was decided by the Tribunal on 28th of June 1985. The High Court decided the appeal on 18th of April 1991 and now after 23 years from the date of preliminary notification and 15 years from the date of award the Board claims recall of the order as no notice was issued to it and that also by paying deficient court fee. Law and justice both stare at such fruitless litigation at the expense of the public money.

But this is not the end. Having laid down the law and having come to the conclusion at the Avas Vikas Parishad was not a necessary party nor it could have moved an application for recall of the order passed by the High Court not only due to the long delay but even because it had no right in law to file such an application it is proposed to exercise power suo motu under Article 142 of the Constitution for sake of justice as the other side of the picture is disturbing. The claimant had claimed compensation at the rate of Rs. 15 per sq. yrd. Yet the Tribunal awarded it at Rs. 16.44 p. as the respondent appears to have moved an amendment application claiming Rs. 25 per sq. yrd. which was allowed. It is not clear at what stage the

amendment application was moved and allowed but assuming it to be so the finding of the High Court in this regard is worth extracting : "Therefore, while determining the market rate of the land conjectures will have to be done. Taking into consideration the factors, such as nearness to the bye-pass, nearness to the inhabited area and superiority in fact in location and also keeping in view the fact that the tribunal has awarded Rs. 16.54 p. per sq. yard for further land lying in the South of the bye-pass and the rates fixed by the Special Land Acquisition Officer for the land falling in three different belts, we are of the view that the rates for the land for each of the three belts as specified by S.L.O. in his award should reasonably be fixed as below :

1. For the land falling in First Belt.....Rs. 25 per sq. yd.
2. For the land falling in Second Belt.....Rs. 23.50 per sq. yd.
3. For the land falling in Third Belt.....Rs. 20 per sq. yd."

Not an iota of evidence has been discussed. No material has been noticed. No reason has been given for such enhancement. Determination of compensation undoubtedly involves guess work but what is meant by guess work and to what extent the courts can indulge in such guess work has been laid down in numerous decisions of this Court. But the finding extracted above, to say the least, is not only arbitrary without basis but in utter disregard of the statutory law and the judicial expositions of it. It is not necessary to say further but the finding and the reasoning recorded by the High Court is indeed a matter of concern. It is accordingly set aside and the High Court is requested to decide it afresh after hearing the parties. It is necessary to clarify that the Board shall not have a right of being heard as it never appeared before the Land Acquisition Officer or the Tribunal nor filed any application for leading any evidence. Nor it claims any fraud or collusion. It is left open to the High Court if it feels necessary in the facts and circumstances of the case to permit the parties to lead any evidence to do justice.

ORDER OF THE COURT (PER MAJORITY) Leave granted.

1. Section 50(2) of the L.A. Act confers on a local authority for whom land is being acquired a right to appear in the acquisition proceedings before the Collector and the reference court and adduce evidence for the purpose of determining the amount of compensation.
2. The said right carries with it the right to be given adequate notice by the Collector as well as the reference court before whom acquisition proceedings are pending of the date on which the matter of determination of compensation will be taken up.
3. The proviso to Section 50(2) only precludes a local authority from seeking a reference but it does not deprive the local authority which feels aggrieved by the determination of the amount of compensation by the Collector or by the reference court to invoke the remedy under Article 226 of the Constitution as well as the remedies available under the L.A. Act.
4. In the event of denial of the right conferred by Section 50(2) on account of failure of the Collector to serve notice of the acquisition proceedings the local authority can invoke the jurisdiction of the High Court under article 226 of the Constitution.
5. Even when notice has been served on the local authority the remedy under Article 226 of the Constitution would be available to the local authority on grounds on which judicial review is permissible under Article 226.
6. The Local authority is a proper party in the proceedings before the reference court and is entitled to be impleaded as a party in those

proceedings wherein it can defend the determination of the amount of compensation by the Collector and oppose enhancement of the said amount and also adduce evidence in that regard.

7. In the event of enhancement of the amount of compensation by the reference court if the Government does not file an appeal the local authority can file an appeal against the award in the High Court after obtaining leave of the court.

8. In an appeal by the person having an interest in land seeking enhancement of the amount of compensation awarded by the reference court the local authority should be impleaded as a party and is entitled to be served notice of the said appeal. This would apply to an appeal in the High Court as well as in this Court.

9. Since a company for whom land is being acquired has the same right as a local authority under Section 50(2), whatever has been said with regard to a local authority would apply to a company too.

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10. The matters which stand finally concluded will, however, not be reopened.

We, therefore allow the applications submitted by the Board for being impleaded as a respondent in the appeals filed by the land owners in this Court and direct that the Board be also impleaded as a respondent in the appeals filed by the land owners in the High Court. The judgment of the Allahabad High Court dated December 21, 1990 in First Appeals Nos. 584, 585 and 642 of 1985 and the judgment of the said High Court dated April 18, 1991 in First Appeals Nos. 586, 587 and 641 of 1985 as well as the order dated January 20, 1993 on the review applications filed against the judgment dated April 18, 1991 are set aside and the said appeals are remitted to the High Court for decision in accordance with law. The appeals are disposed of accordingly. There will be no order as to costs.

A.G.
Appeals Disposed of.