A BHATINDA IMPROVEMENT TRUST

v.

BALWANT SINGH AND OTHERS

SEPTEMBER 11, 1991

B [M.H. KANIA AND P.B. SAWANT, JJ.]

Interpretation of Statutes—Reference of Sections 6, 28, 58, 59 of Land Acquisition Act, 1894 in the Punjab Town Improvement Act, 1922—Amendment of those provisions of Land Acquisition Act, after reference—Whether affects the Punjab Town Improvement Act, 1922.

C

Punjab Town Improvement Act, 1922—Sections 36, 42 read with section 6, Land Acquisition Act, 1894—Notice under Section 36 on 30.5.1977 and publication of Notification sanctioning development scheme u/s. 42 on 30.6.1980—First Proviso of Section 6, Land Acquisition Act—Applicability of.

D

The appellant—the Improvement Trust-framed a development scheme under the Punjab Town Improvement Act, 1922 and notices under Section 36 of the Act were published in the Daily Tribune on May 31, 1977, June 7, 1977 and June 14, 1977 and in the local Daily Ajit on May 30, 1977, June 6, 1977 and June 13, 1977 and in the Punjab E **Government Gazette on June 17, 1977, June 24, 1977 and July 1977, respectively.**

A notification as required under Section 42 of the Act was published on June 30, 1980 sanctioning the development scheme.

F **The notification was challenged by the Respondents in a writ petition in the High Court on the ground that the notification was not issued within the stipulated period of three years from the first publications of the notice.**

The Single Judge of the High Court allowed the writ application G **and the Division Bench of the High Court dismissed the Letters Patent Appeal, against which the present petition has been filed by the Improvement Trust, contending that the time limit of three years for the issue of the notification under section 42 of the Act was not prescribed under the Act; that the first proviso to section 6 of the Land Acquisition Act, 1894, was not applicable to the scheme in question,** H **and; that the provisions of Section 6 of the Land Acquisition Act were**

incorporated in the Act from the very time of its enactment and hence, any amendment to the said section after that date would not be applicable to acquisitions under Act. A

Dismissing the appeal, this Court,

B

HELD: 1. In a case where a statute is incorporated by a reference into another statute, an amendment of the statute so incorporated after the date of incorporation does not affect the second statute and the provisions of the latter statute remain the same as they were at the time of incorporation. [934F-G]

C

2. Where one statute is referred to in another, it may be merely by way of reference or by way of incorporation of the same. This depends on the language used in the latter statute and other relevant circumstances. [934G]

D

3. In the present case, there is no question of incorporation of any of the provisions of the Land Acquisition Act into the Punjab Improvement Act 1922 at all as the latter Act does not deal with acquisition of land for the purposes of a scheme as contemplated under the Act. The acquisition of such land for the purposes of the scheme is left to the general law of the land in that connection, namely, the Land Acquisition E Act, which has to be resorted to for the purposes of acquisition of land for the purposes of a scheme as contemplated under the Punjab Town Improvement Act. The only difference is that some of the provisions of the Land Acquisition Act, as referred to in the relevant sections of the Act, are given effect to as amended by the relevant sections of the Act. In these circumstances, it cannot be held that any provisions of the Land F Acquisition Act have been incorporated into the Act and the provisions of the Land Acquisition Act which have to be applied, are the provisions as they stood at the relevant time, namely, at the time of acquisition, in the absence of a contrary intention. [934G-C]

G

4. The notification under Section 42 should have been published within the period of three years of the date of publication of the notification under Section 4(1) of the Land Acquisition Act, as required under the first proviso to Section 6 of the Land Acquisition Act. Under sub-clause (1) of Clause (2) of the Schedule to the said Act, the first publication of a notice of any improvement scheme under section 36 of the said Act, is H

substituted for and has the same effect as the publication in the Government Gazette of a notification under sub-section (1) of Section 4 of the Land Acquisition Act. The notice under section 36 of the said Act is required to be published, *inter alia*, in a newspaper or newspapers as set out in secion 36(2)(a) of the said Act. In the present case, such a notice was first published in the daily 'Ajit' on May 30, 1977, and hence, the notification under Section 42 of the said Act should have been published on or before May 30, 1980. In fact, the notification under Section 42 of the said Act, admittedly, was published on June 30, 1980 and hence, was clearly beyond time. [935C-F]

***Mahindra and Mahindra Ltd.* v. *Union of India and Another*, [1979] 2 SCR 1038 and *Secretary of State for India in Council* v. *Hindustan Cooperative Insurance Society Ltd.*, [1958] IA 259 at 267, referred to.**

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 3574 of 1991.

From the Judgment and Order dated 5.9.1990 of the Punjab and Haryana High Court in L.P.A. No. 127 of 1983.

S.K. Mehta, Dhruv Mehta and Aman Vachher for the Appellant.

O.P. Sharma, K.R. Gupta, Vivek Sharma, R.C. Gubrele and Ms. Nanita Sharma for the Respondents.

The Judgment of the Court was delivered by

KANIA, J. Leave granted. Counsel heard.

The appellant, Bhatinda Improvement Trust, framed a development scheme under the Punjab Town Improvement Act, 1922 (referred to hereinafter as "the said Act"). Notices under Section 36 of the said Act in respect of the said scheme, setting out the particulars referred to in the said Section, were published in the Daily Tribune on May 31, 1977, June 7, 1977, and June 14, 1977. The said notices were also published in the local daily Ajit on May 30, 1977, June 6, 1977, and June 13, 1977 and in Punjab Government Gazette on June 17, 1977, June 24, 1977 and July 1977, respectively. A Notification as required under Section 42 of the said Act was published on June 30, 1980 sanctioning the said development scheme. The said Notices and

Notifications were challenged by the respondents in Civil Writ No. 2508 of 1982 filed in the High Court of Punjab and Haryana, *inter alia*, on the ground that the Notification under Section 42 was not issued within the stipulated period of three years from the first publication of the Notice under Section 36 and on that account it was bad in law. This contention found favour with the learned Single Judge of Punjab and Haryana High Court who allowed the writ petition and set aside the Notification under Section 42 which was issued on June 30, 1980. A Letters Patent Appeal preferred against the said Judgment was dismissed by a Division Bench of the said High Court and the present petition is directed against the aforesaid judgment of the Division Bench, dismissing the said Letters Patent Appeal.

A

B

C

It was submitted by Mr. Mehta, learned Counsel for the appellant that the time limit of three years for the issue of the Notification under Section 42 of the said Act was not prescribed under the said Act and that the first proviso to Section 6 of the Land Acquisition Act, 1894, was not applicable to the scheme in question. It was submitted by him that the provisions of Section 6 of the Land Acquisition Act were, in effect, incorporated into the said Act which was enacted in 1922 from the very time of its enactment and hence, any amendment to the said section after that date would not be applicable to acquisitions under the said Act. It was pointed out by him that the aforesaid time limit of three years was inserted in the Land Acquisition Act in 1984, long after the said Act was enacted as set out particularly, hereinafter and hence, it could not have any application to the acquisitions made for the purposes of the said Act.

D

E

In order to examine the correctness of the submissions of Mr. Mehta, it is necessary to take note of the relevant provisions of the said Act and the Land Acquisition Act. Section 28 of the said Act sets out the matters which may be provided for in a scheme. Under sub-section (2) clause (i) of the said section it is *inter alia* provided that a scheme under said Act may provide for the acquisition under the Land Acquisition Act as modified by the said Act. Section 36 of the said Act provides that when a scheme under the said Act has been framed, the trust shall prepare a notice setting out the particulars contained in the said section. The relevant part of sub-section (2) of the said Section runs as follows:

F

G

(2) The trust shall:

"(a) notwithstanding anything contained in Section 78

H

A cause the said notice to be published weekly for three consecutive weeks in the official Gazette and in a newspaper or newspapers with a statement of the period within which objections will be received ....".

B Sub-section (1) of Section 42 provides that the State Government shall notify the sanction of every scheme under the said Act and the trust shall forthwith proceed to execute the scheme and so on. Sub-section (2) of the said Section provides that a Notification under sub-section (1) thereof shall be conclusive evidence that the scheme has been framed and sanctioned. Section 58 provides for the constitution of a tribunal for the purposes of performing the functions of a court in C a reference to acquisition of land for improvement trust under the Land Acquisition Act. Section 59 provides for modification of the Land Acquisition Act, as set out therein for the purposes of acquiring the land under the Land Acquisition Act for the said trust. We are not concerned with the actual modifications referred to in Section 59. We need only note that under sub-section (b) of Section 59 it is provided D that the Land Acquisition Act may be subject to further modifications as indicated in the Schedule to the said Act. Sub-clause (1) of Clause 2 of the Schedule to the said Act, referred to in Section 59, runs as follows:

E "(2) *Notification under section 4 and declaration under section 6 to be replaced by notification under sections 36 and 42 of this Act*—

(1) The first publication of a notice of any improvement scheme under section 36 of this Act shall be substituted for and have the same effect as publication in the Official F Gazette and in the locality of a notification under sub-section (1) of section 4 of the said Act, except where a declaration under section 4 or section 6 of the said Act has previously been made and is still in force."

G Sub-section (1) of Section 4 of the Land Acquisition Act, *inter alia,* provides that whenever it appears to the appropriate Government that land in any locality is needed or is likely to be needed for any public purpose, a notification to that effect shall be published in the Official Gazette as prescribed in the said section. Section 5-A deals with hearing of objections. Sub-section (1) of Section 6, *inter alia* provides that H when the appropriate Government is satisfied after considering the

report, if any, made under Section 5-A, sub-section (2), that any particular land is needed for a public purpose, a declaration to that effect shall be made as prescribed in the said section. The relevant part of the first proviso to the said sub-section as substituted by Act 68 of 1984 runs as follows:

> "Provided that no declaration in respect of any particular land covered by a notification under Section 4, sub-section (1)
>
> (i) published after the commencement of the Land Acquisition (Amendment and Validation) Ordinance, 1967 (1 of 1967), but before the commencement of the Land Acquisition (Amendment) Act, 1984, shall be made after the expiry of three years from the date of the publication of the notification; or".

It was by this substituted proviso that the said time-limit of three years was prescribed. Sub-section (2) of Section 6 provides for the publication of the declaration under Section 6 and prescribes the manner in which the same shall be done.

It is the submission of learned Counsel for the appellant that by the aforesaid provisions, and in particular, Sections 28, 58 and 59 of the said Act certain provisions of the Land Acquisition Act, and particularly, Section 6 thereof were, in effect, incorporated into the said Act by reference and hence, it is only such provisions of the Land Acquisition Act as were in existence at the time when the said Act was enacted in 1922 which could be said to be incorporated into the said Act. In support of his submission he placed strong reliance on the decision of a Bench comprising three learned Judges Bench of this Court in the case of *Mahindra and Mahindra Ltd.* v. *Union of India and Another.*, [1979] 2 SCR 1038. In that case it has been pointed out that Section 55 of the Monopolies and Restrictive Trade Practices Act, 1969 (referred to hereinafter as the "MRTP Act") provides that any person aggrieved by the order made by the Central Government or the Commission (The Monopolies and Restrictive Trade Practices Commission) under Section 13 or Section 37 of the MRTP Act may prefer an appeal to the Supreme Court on one or more of the grounds specified in Section 100 of the Code of Civil Procedure. It was pointed out in the judgment that on the date on which the MRTP Act came into force, Section 100 of the Code of Civil Procedure specified 3 grounds on which a second appeal could lie to the High Court, one of them being that the decision appealed against, was contrary to law. By

A an amendment made in 1976, Section 100 of the Code was subsituted by a new section which provides that a second appeal shall lie to the High Court only if the High Court is satisfied that the case involves a substantial question of law. The appellant took the stand that under the provisions of Section 100 of the Civil Procedure Code, as it stood when the MRTP Act was enacted, the appeal was clearly maintainable B as the impugned order was contrary to law. The respondents contended that, although this might be so, no substantial question of law was involved in the second appeal and hence, the appeal was not maintainable. It was submitted by the respondents that the maintainability of the appeal would have to be determined on the basis of Section 100 of the Code as amended. This Court took the view that the appeal was maintainable. It was held that on a proper interpretation of C Section 55 it must be held that the grounds specified in Section 100 of the Code as it stood when the MRTP Act was enacted in 1969, were incorporated in Section 55 of the MRTP Act and the substitution of the new Section 100 did not affect or restrict the grounds as incorporated in Section 55. In the said judgment this Court cited with D approval the judgment of the Privy Council in *Secretary of State for India in Council* v. *Hindustan Co-operative Insurance Society Ltd.*, [1958] I.A. 259 at 267. where the Judicial Committee observed:

> "In this country it is accepted that where a statute is incorporated by reference into a second statute, the repeal E of the first statute does not affect the second; (see the case collected in Craies on Statute Law, 3rd edn. pp. 349, 350)".

We find ourselves unable to accept the submissions of learned Counsel for the appellant. As pointed out by the Supreme Court and the Judicial Committee in the aforesaid decisions, it is well-settled law F that where a statute is incorporated by a reference into a second statute, the repeal of the first statute does not affect the second. Similarly, in a case where a statute is incorporated by a reference into another statute an amendment of the statute so incorporated after the date of incorporation does not affect the second statute and the provisions of the latter statute remain the same as they were at the time of G incorporation. It is again well-settled that where one statute is referred to in another, it may be merely by way of reference or by way of incorporation of the same. This depends on the language used in the latter statute and other relevant circumstances. In the present case, however, we find that there is no question of incorporation of any of the provisions of the Land Acquisition Act into the said Act at all. The H said Act does not deal with acquisition of land for the purposes of a

scheme as contemplated under the said Act. The acquisition of such land for the purposes of the scheme is left to the general law of the land in that connection, namely, the Land Acquisition Act, which has to be resorted to for the purposes of acquisition of land for the purposes of the schemes contemplated under the said Act. The only difference is that some of the provisions of the Land Acquisition Act, as referred to in the relevant sections of the said Act, are given effect to as amended by the relevant sections of the said Act. In these circumstances, it cannot be held that any provisions of the Land Acquisition Act have been incorporated into the said Act and the provisions of the Land Acquisition Act which have to be applied, are the provisions as they stand at the relevant time, namely, at the time of acquisition, in the absence of a contrary intention. There is nothing to indicate that there was any such contrary intention in the present case. In these circumstances, the notification under Section 42 should have been published within the period of three years of the date of publication of the notification under Section 4(1) of the Land Acquisition Act, as required under the first proviso to Section 6 of the Land Acquisition Act. Under sub-clause (1) of clause (2) of the Schedule to the said Act, which we have referred to earlier, the first publication of a notice of any improvement scheme under Section 36 of the said Act, is substituted for and has the same effect as the publication in the Government Gazette of a notification under sub-section (1) of Section 4 of the Land Acquisition Act. The notice under section 36 of the said Act is required to be published, *inter alia*, in a newspaper or newspapers as set out in section 36(2)(a) of the said Act. In the present case, such a notice was first published in the daily 'Ajit' on May 30, 1977, and hence, the notification under Section 42 of the said Act should have been published on or before May 30, 1980. In fact, the notification under Section 42 of the said Act, admittedly, was published on June 30, 1980, and hence, was clearly beyond time. In these circumstances, the notice under Section 36 of the said Act lapsed on the expiry of three years from May 30, 1977, and no action pursuant to the said notice could be taken thereafter. The notification under Section 42 of the said Act was clearly beyond time and bad in law, as it was not published within the period provided. The acquisition proceedings lapsed. The submission of learned Counsel for the appellant must be rejected. No other point was canvassed before us.

In the result, the appeal fails and is dismissed with costs.

V.P.R. Appeal dismissed.