

Mansoor Khan and Others

Vs

State of U.P. and Others

Civil Appeal No. 151 of 1972

(D.G. Palekar, A. Alagiriswami JJ)

01.05.1973

JUDGMENT

ALAGIRISWAMI, J. -

1. This is an appeal by certificate against the judgment of a Division Bench of the Allahabad High Court dismissing in limine a batch of writ petitions filed by the appellants questioning the proceedings taken to acquire their lands under the Uttar Pradesh Avas Evam Vikas Parishad Adhiniyam, 1965 (U.P. Act 1 of 1966). Under this Act a Board called the Uttar Pradesh Avas Evam Vikas Parishad is constituted. That Board has the power to frame and carry out various types of housing and improvement schemes and for that purpose also to acquire properties. The particular scheme for the purpose of which the impugned land acquisition proceedings were initiated was a land development scheme under Section 25 of the Act. Under Section 28 when any housing or improvement scheme has been framed, the Board shall prepare a notice to that effect and cause it to be duly published and invite objections. Section 30 mentions persons and bodies which can file objections. Under Section 31 after considering the objections, if any, received and after giving an opportunity of being heard to the objectors, the Board may, so far as may be, within six months from the date of receipt of the last such objection, either abandon the scheme, or if the estimated cost of the scheme does not exceed twenty lakhs of rupees, sanction it with or without modifications, and if the estimated cost of the scheme exceeds twenty lakhs of rupees, submit it to the State Government for sanction with such modifications, if any, as the Board may suggest. The State Government may sanction with or without modifications, for refuse to sanction, or return for reconsideration, nay scheme submitted to it under sub-section (1). Under Section 32 whenever the Board or the State Government sanctions a housing or improvement scheme, it shall be notified in the Gazette and the notification in respect of any scheme shall be conclusive evidence that the scheme has been duly framed and sanctioned. If the scheme is one sanctioned by the Board an appeal to the State Government is also provided. The present scheme is one sanctioned by the State Government as its cost exceeds Rs. 20 lakhs. The scheme in question called the Karaili Land Development Scheme was notified under Section 28 on July 27, 1967, and objections were invited. The appellants filed their objections and the Board heard them on January 30, 1968. Representations had also been made by the appellants to the Government on July 13, 1970. The scheme was sanctioned on July 17, 1970. On May 14, 1971 the appellants received notices under Sections 9(3) and 17(1) of the Land Acquisition Act. 1894, and thereupon filed a petition challenging the proposed acquisition which was dismissed in limine by the High Court.

2. Before us Mr. V. C. Parashar vigorously urged many contentions of which we are mentioning below only the relevant ones :

(1) That proceedings under the Avas Evam Vikas Adhinyam sanctioning the "Kairaili Bhoomi Vikas Yojna, Allahabad" are ultra vires as no previous permission was obtained to the said scheme under the mandatory provisions of Section 6 of the U.P. Regulation of (building Operations) Act, 1958 before undertaking the same, as the status of the U.P. Avas Evam Vikas Parishad is nothing more than that of person being a body corporate as laid down in Section 3(ii) of the U.P. Avas Evam Vikas Parishad Adhinyam 1965 (U.P. Act. No. 1 of 1966).

(2) That the sachment was not sanctioned within six months from the date of the receipt of objections.

(3) That there was no urgency for applying Section 17(1) of the Land Acquisition Act, 1894, even before the representation under Section 49 of the U.P. Avas Evam Vikas Adhinyam had been considered.

Though as many as 11 grounds have been raised in the petition before the High Court and 8 in petition of appeal in this Court, as we consider the rest of the points as wholly without substance it is unnecessary to refer to them.

Point 1 :

3. Under Section 6 of the U.P. (Regulation of Building Operations) Act, 1958, no person shall undertake or carry out the development of any site in any regulated area or erect, re-erect or make any material change in any building or make or extend any excavation or lay out any means of access to a road in such area except in accordance with the directions, if any, issued under this Act and with previous permission of the prescribed Authority in writing. It is admitted that the area proposed to be acquired is a regulated area. We do not see any substance in the contention that as no sanction under this section had been taken the acquisition proceedings are ultra vires. This section is intended to prevent haphazard development of regulated areas and cannot apply where a Board like the U.P. Avas Evam Vikas Parishad frames schemes for the express purpose of regulated development. The Acts mentioned in that section have not yet even begun and even if they are so begun there may be room for objecting to those Acts without complying with its provisions but if cannot have any relevance to the proceedings for acquiring land for a scheme which may perhaps in due course lead to such acts being done. It is at that stage, if at all, that section ought to be relied upon if it is contravened.

4. Furthermore, the Act is a self-contained Act with all the necessary provisions. Indeed where it considers necessary it has even amended earlier acts as is seen from Section 55 while mentions the amendments to which the Land Acquisition Act, 1894 shall be subject in so far as it applies to the acquisition of land for the purposes of the Act. If the intention were that framing of any scheme was to be subject to the provisions of Section 6 of the U.P. (Regulation of Building Operations) Act, 1958, the Act would have specifically said so. In the absence of any such provision, provisions of Uttar Pradesh Act 1 of 1966 would have to be given full effect to. Moreover, this is a special Act whose provisions will take effect in preference to the provisions of a general Act like the U.P. (Regulation of Building Operations) Act of 1958. We hold that there is no substance in this contention.

Point 2 :

5. The fact the scheme was not sanctioned within six months from the date of inviting objections cannot make the scheme illegal or ultra vires. Even Section 31 merely provides that "the Board may,

so far as may be, within six months..... sanction it.....". So the period of six months within which the scheme has to be sanctioned is not an absolute limit. The provision regarding the scheme being sanctioned within six months is purely directory and not mandatory. The scheme is, therefore, valid.

Point 3 :

6. The provisions of Section 17(1) of the Land Acquisition Act, 1894 leaves it absolutely to the discretion of the appropriate government in cases of urgency to direct the Collector to take possession of any waste or arable land needed for public purposes even though no award has been made. There is no dispute that these lands are arable lands. So, the question whether there is urgency or not is left to the discretion and decision of the appropriate Government. Under sub-section (4) of that section in the case of any land to which, in the opinion of the appropriate Government the provisions of sub-section (1) or sub-section (2) are applicable, the appropriate Government may direct that the provisions of Section 5-A shall not apply. One of the modifications to the Land Acquisition Act, 1894 made by Section 55 of the U.P. Act 1 of 1966 is that the provisions of Section 5-A of the Land Acquisition Act, 1894, shall be inapplicable in relation to any land proposed to be acquired under any housing or improvement scheme notified in the Official Gazette under Section 28 or under clause (a) of sub-section (3) of Section 31. It is, therefore, obvious that the Legislature has specifically applied its mind to the question whether an inquiry under Section 5-A of the Land Acquisition Act was necessary and dispensed with it in the case of schemes undertaken under the provisions of that Act. We do not see what relevance the power of the State Government under Section 49 of the Act call for and examine the records of the Board relating to any housing or improvement scheme and modify, annul or remitting for re-consideration has to the power to take possession of the land under provisions of Section 17(1) of the Land Acquisition Act, 1894. Furthermore, this scheme being sanctioned by the Government itself there is no room for exercise of the powers under Section 49.

7. In the result we consider that all the points raised on behalf of the appellants are wholly without substance and dismiss the appeal. The appellants shall pay the costs of the respondents.

8. We must also refer to and dispose of certain C.M.Ps. filed in the course of these proceedings. C.M.P. No. 780 of 1972, and application for adding the legal representatives of one of the petitioners, Abdul Bari Khan is allowed. C.M.P. No. 780-A of 1972, an application for appointment of next friend of the three minor legal representatives is allowed. C.M.P., No. 3486 of 1972, an application for amendment of certain details of the lands sought to be acquired, is allowed. C.M.P. No. 9487 of 1972, a petition by 22 persons to be added as parties in this appeal is dismissed. C.M.P. No. 9488 of 1972 is also consequently dismissed. There will be no order as to costs in any one of them.

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