

ALLAHABAD HIGH COURT

Khadim Husain

Vs.

State of U.P

Civil Misc. Writ Petn. No. 2830 of 1970

(G.C. Mathur and Satish Chandra, JJ.)

09.10.1972

JUDGMENT

Mathur, J.

1. These three writ petitions have been referred to this Bench at the instance of a learned Single Judge as he was of the view that certain Single Judge decisions cited before him required reconsideration. In these petitions the petitioners have challenged the acquisition of their land in pursuance of two schemes which were framed under the U. P. Town Improvement Act, 1919, but were finalized and sanctioned under the U. P. Avas Evam Vikas Parishad Adhiniyam, 1965.

2. In or about the year 1965, the Gorakhpur Improvement Trust framed two housing accommodation schemes the Rustampur-Tiwaripur Housing Accommodation Scheme and the Surajakund Housing Accommodation Scheme. The notices under Section 36 of the Town Improvement Act in respect of the Rustampur-Tiwaripur Housing Accommodation Scheme were published in the U. P. Gazette dated March 13, 1965. The notices relating to the Surajakund Housing Accommodation Scheme were published in the U. P. Gazette dated June 12, 1965. By these notices objections were invited to the schemes. The petitioners filed certain objections. Before these objections could be disposed of by the Improvement Trust, the U. P. Avas Evam Vikas Parishad Adhiniyam, 1965 (U. P. Act No. 1 of 1966) (hereinafter referred to as the Parishad Act) came into force from February 16, 1966. This Act provided for the establishment, incorporation and functioning of a housing and development Board called the U. P. Avas Evam Vikas Parishad (this will hereinafter be referred to as the Board). The Board was established on December 6, 1967 and from that date the Parishad Act was made applicable to the area of the

Gorakhpur Improvement Trust. By virtue of the provisions of sub-section (1) of Section 97 of the Parishad Act the Gorakhpur Improvement Trust stood dissolved from December 6, 1967. By virtue of sub-section (3) of this section the schemes framed by the Gorakhpur Improvement Trust stood transferred to the Board and the Board was required to proceed further with these schemes in accordance with the corresponding provisions of the Parishad Act. By a resolution dated March 23, 1968 the Board re-designated the Rustampur-Tiwaripur Housing Accommodation Scheme as the Rustampur-Tiwaripur Bhoomi Vikas Yojna No. 5 and the Surajkund Scheme as the Surajkund Bhoomi Vikas Yojna. Thereafter the objections which had been filed by the petitioners to the schemes notified under Section 36 of the Town Improvement Act, were considered and decided by the Board. On June 17, 1968, the Board sanctioned the Rustampur-Tiwaripur Bhoomi Vikas Yojna No. 5 under Section 31 (1) of the Parishad Act. This sanction was published under Section 32 (1) of the Parishad Act in the U. P. Gazette dated May 3, 1969. The Surajkund Bhoomi Vikas Yojna which involved an expenditure of more than Rs. 20 lacs was referred by the Board to the State Government for sanction as required by Section 31 (1). The State Government sanctioned the scheme on May 30, 1968 and the sanction was published in the U. P. Gazette dated September 14, 1968. Section 55 (1) of the Parishad Act provides that any land required by the Board for any of the purposes of the Act may be acquired under the provisions of the Land Acquisition Act, 1894 as amended in its application to U. P. and further modified as specified in the Schedule to the Parishad Act. A notification dated December 31, 1969 under Section 17 of the Land Acquisition Act, 1894, as modified by the Parishad Act was published in the U. P. Gazette dated January 10, 1970 in respect of the land required for Rustampur-Tiwaripur Bhoomi Vikas Yojna No. 5, directing the Collector of Gorakhpur to take possession of the land needed for the purpose after 15 days even though no award had been made. Thereupon the petitioners whose lands are affected by these two schemes filed these three writ petitions.

3. The acquisition proceedings have been challenged by the petitioners on the following six grounds.

(i) that the Gorakhpur Improvement Trust could not legally function and frame the original schemes as the commencement of the terms of the

Chairman and trustees were not notified under Section 8 of the Town Improvement Act;

(ii) that the housing accommodation schemes framed by the Gorakhpur Improvement Trust were invalid as no housing accommodation schemes could be framed under the Town Improvement Act for municipal areas;

(iii) that the notification published under Section 32 (1) of the Parishad Act, in respect of the Rustampur-Tiwaripur Bhoomi Vikas Yojna No. 5 (which notification is equivalent to a notification under Section 6 of the Land Acquisition Act 1894), is invalid as it was not published within two years after the commencement of the Land Acquisition (Amendment and Validation) Ordinance, 1967 as required by Section 4 (2) of the Land Acquisition (Amendment and Validation) Act 1967;

(iv) that the notification under Section 17 of the Land Acquisition Act is void as the land sought to be acquired is neither waste nor arable land;

(v) that the scheme sanctioned by the Board is not the same scheme which was framed and notified by the Improvement Trust and, therefore, the Board was not entitled to proceed with it under Section 97 of the Parishad Act; and

(vi) that the acquisition of the plots belonging to the petitioners violates Article 26 of the Constitution.

We shall deal with these grounds in this order.

4. The U. P. Town Improvement Act was enacted in the year 1919. Sub-section (2) of Section 1 provided that the Act shall extend to the whole of Uttar Pradesh. Sub-section (3) of Section 1 provided that Section 1 and Section 66 shall come into force at once. It further provided that the State Government may, by notification direct that the rest of the Act shall come into operation in the whole or any part of any municipality and in any area adjacent thereto, on such date as may be specified in such notification. The U. P. Town Improvement (Adaptation) Act, 1948, empowered the State Government when bringing the Town Improvement Act into operation in any area to extend it to such area with the omissions, additions and modifications specified in the Schedule to the Adaptation Act. By a notification dated March 21, 1963 published in the U. P. Gazette (Extraordinary) of the same date the Governor of Uttar Pradesh in exercise of powers under sub-section (3) of Section 1 of the

Town Improvement Act brought the Town Improvement Act, with the omissions, additions and modifications specified in the Schedule to the Adaptation Act, into operation, from the date of the notification in the following area :-

"Area falling within the limits of the Municipality of Gorakhpur and a distance of five miles around the Municipal limits but excluding the area within the limits of Gorakhpur Cantonment."

5. Section 3 of the Town Improvement Act cast the duty of carrying out the provisions of this Act in any local area upon the Improvement Trust of the Town. Section 4 provides that the Trust shall consist of the following Trustees –

- (i) a Chairman;
 - (ii) the Chairman of the municipal board;
 - (iii) seven other persons in Kanpur and five other persons in other places.
- Sub-section (2) of this section provided that the Chairman of the Trust and the Trustees other than the Chairman of the municipal board, shall, be appointed by the State Government by a notification. Sections 6 and 7 provided that the terms of office, of Chairman and the other nominated Trustees shall be three years. Section 8 (1) on which reliance is placed by learned counsel for the petitioners in support of the first ground reads thus :-

"8 (1) The term of office of the first Trustees shall commence on such date as shall be notified in this behalf by the State Government."

6. By another notification dated March 21, 1963 published in the U. P. Gazette (Extraordinary) of the same date, the Governor of Uttar Pradesh in exercise of the powers under Section 4 (2) of the Act, appointed the following persons as Chairman and Trustees of the Gorakhpur Improvement Trust :-

- (a) Chairman - District Magistrate, Gorakhpur.
- (b) Trustees -
 - (i) Superintending Engineer, Public Works Department
 - (ii) Sri Singhasan Singh, M. P.
 - (iii) Dr. K. N. Lahri,

(iv) Sri Radha Raman Dass, M. L. C.

(v) Sri Rai Rajeshwari Prasad, Advocate.

Admittedly no notification under Section 8 (1) was issued at that time. The contention of the petitioners is that until a notification under Section 8 (1) was made setting down the date of the commencement of the terms of the Trustees, the term could not commence and the Trustees could not function. It is urged that no notification having been issued notifying the date of the commencement of the terms of the Trustees, the Improvement Trust did not come into existence and the persons nominated as Trustees could not function as the Improvement Trust. For this reason it is contended that, the schemes framed by these Trustees in 1965 were not schemes framed by any validly constituted Trust.

7. It may here be mentioned that a notification was issued under Section 8 (1) on February 21, 1966 stating :-

"It is hereby notified that the term of office of the Chairman and the Trustees appointed under notification dated March 21, 1963 shall commence from March 21, 1963."

8. The learned counsel for the petitioners has also urged that the term of the Trustees could not be fixed retrospectively. In our opinion the contentions of learned counsel for the petitioners is not sound. On the Town Improvement Act being made applicable to Gorakhpur and to the adjoining areas the Gorakhpur Improvement Trust was created and incorporated by Section 3 of the Act. Section 4 sets out the personnel of the Improvement Trust and sub-section (2) of Section 4 empowers the State Government to nominate the Chairman and other Trustees. As soon as the notification under Section 4 (2) is made and the personnel of the Improvement Trust are nominated, the Improvement Trust can start functioning. There is no provision in the Act requiring that the Improvement Trust shall not start functioning till a notification under Section 8 (1) is made. It is to be noticed that Section 8 (1) has been specifically made applicable only in respect of the first Trustees. There is no such requirement of notifying the date of commencement of the term of subsequent Trustees. This indicates that the requirement about the commencement of the term of the first Trustees is not an essential requirement for the Improvement Trust or the Trustees nominated to the Trust to start functioning. It appears to us that the

provision under Section 8 (1) was made only for the purpose of determining when the term of the first Trustees will come to an end so that fresh Trustees may be nominated. We are, therefore, unable to accept the petitioners' contention that since no notification under Section 8 (1) was issued at the time of the nomination of the Trustees, the Trustees could not function and the Improvement Trust could not Act.

9. The second ground raised by the petitioners is that a housing accommodation scheme could not be framed for the municipal areas under the Town Improvement Act. Section 24 of the Act enumerates the various types of improvement schemes which an Improvement Trust can frame. Clause (g) of this section mentions a 'housing accommodation scheme.' Sections 25 to 32 give the details of the various types of schemes. Section 31 which deals with 'Housing Accommodation Scheme' provides :-

"Whenever the Trust is of opinion that it is expedient and for the public advantage to provide housing accommodation for any class of the inhabitants of any area to which this Act is extended, the trust may frame a scheme (to be called a "housing accommodation scheme") for the purpose aforesaid".

The contention is that the words underlined above show that a housing accommodation scheme can be made only in respect of an area to which the Act is extended. It is urged that the Act is extended to the areas adjoining a municipality and, therefore, a housing accommodation scheme can be framed only for such areas. Reliance is placed by the petitioners upon the decision of Jagdish Sahai, J., in *Mohammad Amir Ahmad Khan v. Nagar Mahapalika, Lucknow*,¹ It was held in this case that the expression "any area to which this Act is extended" in Sections 30, 31 and 32 of the Town Improvement Act relates to areas situated outside but adjacent to the municipality and to which the provisions of the Act have been extended. This decision certainly supports the contention of the petitioners. With great respect to the learned Judge who decided that case we are unable to agree with this decision. The answer to the question depends on the language of sub-section (3) of Section 1. This sub-section reads :-

"(3) This section and section 66 shall come into force at once. The State Government may by notification direct that the rest of the Act shall come into operation in the whole or any part of any municipality, and in any area adjacent thereto on such date as may be specified in such notification."

The section provides for bringing into operation the Act in the municipal area as well as in the adjacent area at the same time. It does not provide that the Act shall come into force in the municipal areas and may be extended to the adjacent areas. The question of extension can only arise after the Act has been made applicable to one area and then power is reserved to extend it to other areas. Sub-section (3) does not do anything of this kind. It permits the application of the Act to any municipal area and to the adjacent area at the same time. The notification dated March 21, 1963 under sub-section (3) provided :-

"..... the Governor of Uttar Pradesh is pleased to order that the rest of the said Act shall come into operation in the following areas of the districts of Meerut, Dehradun, Bareilly and Gorakhpur;

Meerut.;

Dehra Dun,

Bareilly,

Gorakhpur.

Area falling within the limits of the Municipality of Gorakhpur and a distance of five miles around the Municipal limits but excluding the area within the municipal limits of Gorakhpur Cantonment."

This notification leaves no room for doubt that the rest of the Act was made applicable to the municipal area as well as to the adjoining area by the same notification and at the same time. It cannot be urged that the rest of the Act was first applied to the municipality of Gorakhpur and then extended to the adjoining area. It is obvious that in Section 31 the word "extended" has been used in the sense of 'applied' or 'brought into operation'. Sub-section (3) of Section 1, as already observed, does not contemplate the application of the Act to the municipal area and then extension thereof to the adjoining areas. It contemplates the extension or application of the Act simultaneously to the municipal area and to the adjacent area. Factually also the rest of the Act was

extended or applied to the area of Gorakhpur municipality and to the adjoining areas by the same notification and at the same time. It is therefore, not correct to say that the expression "any area to which this Act is extended" refers only to the adjoining areas and not to the municipal areas. In our opinion this expression embraces the municipal area as well as the adjoining area to which the rest of the Act is extended or applied. Some reliance was placed by learned counsel for the petitioners on the language of Section 2 of U. P. Town Improvement (Adaptation) Act, 1948. This section reads -

"In bringing the United Provinces Town improvement Act, 1919 into operation in any area the State Government if it so thinks fit, may notwithstanding anything contained in sub-section (3) of Section 1 of the said Act, extend it to such area, with such omissions, additions and modifications specified in the Schedule, as the State Government may think fit and thereupon the provisions of the said Act in its application to such area shall be so read and construed as if it had then been adapted and amended accordingly."

Reliance is placed on the words "extend it to such area" used in this section. We do not see how these words help the petitioner's contention. The words "such area" refer to the area mentioned earlier namely, the area in which the Government intend to bring the Town Improvement Act into operation. If, as in the present case, the State Government intended to bring into operation the Town Improvement Act in the area of the Gorakhpur municipality and the adjoining areas then by virtue of Section 2 of the Adaptation Act it was authorized to bring the Act into operation in this area with the modifications mentioned in the Schedule. Section 2 did not in any way alter or amend the provisions of sub-section (3) of Section 1 of the Town Improvement Act. Both the provisions contemplate the bringing into operation of the Town Improvement Act in the municipal area as well as the adjoining area at the same time. Section 2 of the Adaptation Act only authorizes the State Government to bring the Act into operation with the adaptations mentioned in the Schedule. We are accordingly of opinion that a housing accommodation scheme could validly be framed for municipal areas also.

10. We now come to the third ground raised by the petitioners. Section 4 (2) of the Land Acquisition (Amendment and Validation) Act, 1967 reads thus :-

"4 (2). Notwithstanding anything contained in clause (b) of sub-section (1), no declaration under Section 6 of the principal Act in respect of any land which has been notified before the commencement of the Land Acquisition (Amendment and Validation) Ordinance, 1967, under sub-section (1) of Section 4 of the principal Act, shall be made after the expiry of two years from the commencement of the said Ordinance." The Ordinance came into force on January 20, 1967. Section 4 (2) in substance provides that if the notification under Section 4 (1) of the Land Acquisition Act has been made before January 20, 1967 then the declaration under Section 6 must be made within two years of this date and not thereafter. In other words if the notification under Section 4 (1) was made before January 20, 1967 the declaration under Section 6 could not be made after January 19, 1969. The contention of the petitioners is that since the notification under Section 36 of the Town Improvement Act which has been equated to a notification under Section 4 (1) of the Land Acquisition Act, was published on March 31, 1965 i.e. before January 20, 1967 the notification under Section 32 (1) of the Parishad Act which has been equated to the making of a declaration under Section 6, could not have been published after January 19, 1969 and as it was published on 3-5-1969 i. e. after this date it was void and of no effect. Section 56 of the Town Improvement Act provides that the Improvement Trust may acquire land required for carrying out any of the purposes of this Act under the provisions of the Land Acquisition Act, 1894 as modified by Section 58 and by the Schedule to this Act. Clause (2) of the Schedule provides that the first publication of a notice of an improvement scheme under Section 36 of this Act shall be substituted for and have the same effect as publication of a notification under Section 4 (1) of the Land Acquisition Act. Section 55 of the Parishad Act similarly provides that any land required for the purposes of this Act may be acquired under the provisions of the Land Acquisition Act, 1894 as amended in its application to Uttar Pradesh and as modified by the Schedule to this Act. Clause 2 (2) of the Schedule inter alia provides that a notification under Section 32 (1) of this Act shall be substituted for and have the same effect as a declaration by the State Government under Section 6 of the Land Acquisition Act. It is the case of both the parties that the

publication of notification under Section 32 (1) of the Parishad Act takes the place of the publication of the declaration under Section 6 (2) of the Land Acquisition Act. It has not been contended by the petitioners that the publication of the notification under Section 32 (1) of the Parishad Act should be equated with the action taken under Section 6 (1) of the Land Acquisition Act. Therefore, the contention of the petitioners boils down to this that Section 4 (2) of the Land Acquisition (Amendment and Validation) Act 1967 required the publication of the declaration under Section 6 (2) of the Land Acquisition Act to be made on or before January 19, 1969 but the equivalent publication in the present case was made after that date. The learned counsel for the respondents meet this contention in this way. They urge that the expression "declaration under Section 6" in Section 4 (2) of the 1967 Act refers to the making of the declaration under Section 6 (1) and not to the publication of that declaration under Section 6 (2) and for that reason the fact that the notification under Section 32 (1) of the Parishad Act was published after January 19, 1969, is of no consequence. The question that emerges for decision is whether the limitation of 2 years imposed by Section 4 (2) of 1967 Act is in respect of the making of the declaration under Section 6 (1) or in respect of the publication of that declaration under Section 6 (2).

11. Before we proceed to decide this question we may notice another submission made by the learned counsel for the respondents that the Land Acquisition (Amendment and Validation) Act, 1967 is not at all applicable to proceedings under the Parishad Act. Two reasons have been advanced in support of this proposition : The first reason is that the Parishad Act does not require compliance with the provisions of Section 4 or of Section 6 of the Land Acquisition Act and, therefore the Land Acquisition (Amendment and Validation) Act, 1967 which relates only to the procedure for making the declaration under Section 6, is not applicable to the proceedings under the Parishad Act. It is urged that the Parishad Act does not require the making of a declaration under Section 6 of the Land Acquisition Act and that all that it says is that a valid notification under Section 32 (1) shall be deemed to be a valid notification under Section 6 of the Land Acquisition Act. The deeming provision means that all the necessary requirements for making the declaration under Section 6 must also be deemed to have been complied with. Therefore the

provisions relating to the making of that declaration including the provisions of the 1967 Act, are inapplicable to the publication of the notification under Section 32 (1) of the Parishad Act. The second reason given is that by virtue of Section 55 of the Parishad Act, the Land Acquisition Act, 1894, as it stood on the date the Parishad Act came into force, will apply subject to the modifications introduced by the Schedule and that the subsequent amendments of the Land Acquisition Act will have no application. It is urged that the Land Acquisition Act as it stood on the date the Parishad Act came into force, was incorporated by reference into the Parishad Act with certain modifications and that the subsequent modifications of the Land Acquisition Act will not affect the incorporated Act. Reliance in support of this contention is placed on the decision of the Privy Council in *Secy. of State for India in Council v. Hindustan Co-operative Insurance Society Ltd.*,² and on the decision of a Full Bench of this Court in *Mani Ram v. State*,³ We do not consider it necessary to decide the question whether the Land Acquisition (Amendment and Validation) Act, 1967 is or is not applicable to the proceedings under the Parishad Act for the reason that even if this Act is applicable Section 4 (2) thereof does not help the petitioners.

12. The Land Acquisition (Amendment and Validation) Ordinance and the Act were made to get over the decision of the Supreme Court in *The State of Madhya Pradesh v. Vishnu Prasad Sharma*,⁴ In this case the Supreme Court held that successive notifications under Section 6 of the Land Acquisition Act could not be issued in respect of land covered by one notification under Section 4 (1). One of the reasons given in support of the decision was that the successive notifications are made with considerable delay and prejudice the person whose land is so acquired as the compensation has to be paid with regard to the date on which the Section 4 notification is issued. The Ordinance and the Act were made to confer specific power to issue successive notifications under Section 6 of the Land Acquisition Act. Since the question of delay was also involved it was thought fit to place a time-limit for making the declarations under Section 6. Two types of cases were contemplated namely those in which the notifications under Section 4 (1) had been issued before the Ordinance came into force and those in which such notifications were issued after the Ordinance came into force. With regard to the first class of cases provision was made in Section 4 (2) of the Land Acquisition (Amendment and Validation) Act and

with respect to the latter class of cases provision was made by Section 3 (a) (ii) of this Act. In respect of the first class of cases which are covered by Section 4 (2) the declaration under Section 6 has to be made within two years of the date of the Ordinance (January 20, 1967) and in the latter class of cases the declaration has to be made within three years of the date of the publication of the notification under Section 4 (1). Both these limitations as to time are directed against the same Act, that is to say the making of a declaration under Section 6. Section 3 (a) (ii) of the Land Acquisition (Amendment and Validation) Act introduced the following new proviso to Section 6 (1) of the Land Acquisition Act : -

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

The very fact that this proviso has been introduced in Section 6 (1) shows that it is the making of the declaration under Section 6 (1) for which the limitation of three years has been prescribed. If in this proviso the making of a declaration refers to the making of the declaration under Section 6 (1) and not to the publication of the declaration under Section 6 (2) then it is reasonable to hold that the making of a declaration contemplated by Section 4 (2) of the Land Acquisition (Amendment and Validation) Act, also refers to the making of the declaration under Section 6 (1) and not to the publication of that declaration under Section 6 (2). It is true that the provisions of Section 4 (2) have not been introduced as a proviso to Section 6 (1) but then they have not been introduced as proviso to Section 6 (2) either. It thus appears that Section 4 (2) of the Land Acquisition (Amendment and Validation) Act places a limitation of two years from the date of the commencement of the Ordinance on the making of the declaration under Section 6 (1) and not on the publication of that declaration under Section 6 (2) of the L. A. Act. An examination of the scheme of the Land Acquisition Act also supports this conclusion. There are three sub-sections to Section 6. Sub-section (1) empowers the Government or other officer duly authorized to make a declaration that any particular land is needed for a public purpose or for a company. Sub-section (1), therefore, specifically provides for

the making of a declaration. Sub-section (2) then lays down that every declaration made under sub-section (1) shall be published in the Official Gazette. Sub-section (3) lays down a rule of evidence with which we are not concerned. Sub-sections (1) and (2) provide for two distinct things : one for making the declaration and the other for publication of that declaration. Section 4 (2) of the Land Acquisition (Amendment and Validation) Act, 1967 talks of making a "declaration under Section 6". A declaration under Section 6 is made under sub-section (1) and not under sub-section (2). From this also it appears that Section 4 (2) of the Land Acquisition (Amendment and Validation) Act prescribes a time limit in respect of the making of a declaration under Section 6 (1).

13. Our attention was drawn by learned counsel for the respondents to two decisions of the two learned Single Judges of this Court taking a similar view. These decisions are unreported. The first decision is of one of us (Satish Chandra, J.) in *Navin Colonizers v. State of Uttar Pradesh*,⁵ The second decision is that of D.S. Mathur J.) (as he then was) in *Mahalakshmi Land and Finance Co. Ltd. v. State of Uttar Pradesh*,⁶ It may be mentioned that the correctness of these decisions was challenged by the petitioners and that was one of the reasons why the writ petitions were referred for decision to a Bench. In the view that we have taken the limitation prescribed by Section 4 (2) of the Land Acquisition (Amendment and Validation) Act, is not applicable to publication under Section 32 (1) which is equivalent to the publication under Section 6 (2) of the Land Acquisition Act.

14. The fourth ground need not detain us long. The petitioner's complaint is that the notification under Section 17 of the Land Acquisition Act was void as the land sought to be acquired was neither waste nor arable land. It is true that under Section 17 of the Land Acquisition Act the notification can be made only in respect of waste and arable land. But in its application to the proceedings under the Parishad Act. Section 17 (1) of the Land Acquisition Act has been modified. The modified Section 17 (1) is in the following terms :-

"17 (1). Whenever the State Government so directs in the interest of the expeditious execution of a housing or improvement scheme under the Uttar Pradesh Avas Evam Vikas Parishad Adhiniyam, 1965, the

Collector, though no such award has been made, may on the expiry 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 said Adhiniyam. Such land shall thereupon vest absolutely in the Government free from all encumbrances."

Section 17 (1) as amended is applicable to all land and is not confined to waste or arable land. The notification in the present case was issued under the amended Section 17 (1) and, therefore, the mere fact that it relates to land which is not waste or arable cannot affect its validity.

15. The fifth ground is based upon two assertions of fact namely :-

- (i) that the area of the proposed scheme has changed under the sanctioned scheme.
- (ii) that the object and purpose of the original scheme has been changed in the sanctioned scheme.

It is contended that under Section 97 of the Parisihad Act the Board could only continue the schemes as originally framed under the Town Improvement Act and that since the schemes have now been changed the Board has no power to continue the schemes. The assertion regarding change in the area has been made only in respect of the Rustampur-Tewaripur Housing Accommodation Scheme. From the notifications published under Section 36 of the Town Improvement Act in the U. P. Gazette dated March 13, 1965 it appears that the Rustampur Tiwaripur Housing Accommodation Scheme covered an area of 11.474 acres. From the order sanctioning the Rustampur-Tewaripur Bhoomi Vikas Yojna No. 5 (Annexure 5) to the counter affidavit of Sri Karta Krishna Sinha in Writ Petition No. 2836 of 1970, it appears that the final scheme was in respect of 10.650 acres only. It appears that some land included in the original scheme has been excluded and the final scheme is in respect of a lesser area of land. It, therefore, cannot be urged that any new areas have been included in the final scheme. No assertion regarding change of area has at all been made in respect of Suraj Kund Bhoomi Vikas Yojna. Thus there is no foundation for the argument that the schemes have changed on account of change in the area.

16. It was then contended by the learned counsel for the petitioners that the change in the nomenclature of the schemes 'from Housing Accommodation Schemes' to 'Land Development Schemes' itself shows that the object and purpose of the schemes has changed. There is no doubt that the original schemes were prepared as 'Housing Accommodation Schemes' under Section 31 of the Town Improvement Act. Housing Accommodation Scheme could be prepared only to provide housing accommodation for any class of inhabitants of any area. The Parishad Act has provided for two types of schemes for achieving the same object, namely a housing accommodation scheme and a land development scheme. Under Section 19 a Housing Accommodation Scheme may be framed when the Board is of opinion that it is expedient or necessary to meet the need for housing accommodation in any area. A land development Scheme or Bhoomi Vikas Yojna may be prepared when the Board is of opinion that it is expedient to provide building sites in any area. It thus appears that under the Housing Accommodation Scheme provision has to be made for the building of houses by the Board and by others while under the Land Development Scheme sites have to be developed for construction of houses. Both these schemes under the Parishad Act are for meeting the need for housing accommodation by the residents of a particular area. It appears to us that both these schemes under the Parishad Act were included under the Town Improvement Act in one scheme called the Housing Accommodation Scheme. Under the Town Improvement Act a Housing Accommodation Scheme could have provided either for the building of houses or for development of building sites or for both. Under the Parishad Act this scheme has been split up into two schemes but the object and purpose of the Housing Accommodation Scheme under the Town Improvement Act was the same as is the object of the Housing Accommodation and the Land Development Schemes under the Parishad Act. It, therefore cannot be said that by changing the nomenclature of the two schemes the object and purpose of the schemes have changed. We, therefore, find no substance in the fifth ground also.

17. The last ground urged by the petitioners is that the acquisition of their lands offends Article 26 of the Constitution. In Writ Petition No. 2830 of 1970 Khadim Husain has urged that in respect of three plots which were sought to be acquired he had executed on March 6, 1933, a registered deed and created a Waqf-Alal-Aulad. According to him the ultimate beneficiaries after the

extinction of the Waqif's line were the poor, widows, orphans and other charitable purposes. In the counter affidavit it is urged that these plots were shown in the village records as belonging to Khadim Husain and not to any Waqf. In Writ Petition No. 3299 of 1970 the petitioners have urged that in a portion of one of the plots sought to be acquired there is a grave-yard. In the counter affidavit it is stated that the grave-yard portion of the plot has been excluded from the scheme as well as from the acquisition. The petitioners in this writ petition, therefore, can have no grievance in respect of the grave-yard. In Writ Petition No. 3300 of 1970 the petitioners have alleged that in one of the plots sought to be acquired they had installed an idol of Lord Shiva and that it was a place of worship for the public. It was also urged that the family members of the petitioners offer Puja daily on the Chabutra built on this plot. In the counter affidavit it is stated that after the publication of the sanctioned scheme the petitioners built a Chabutra and that on this chabutra they have put certain round-stones which they are designating as the idol of Lord Shiva. There is no specific denial of these allegations in the rejoinder affidavit. The petitioners in this writ petition have, therefore failed to establish that the plot in dispute was used as a place of religious worship before it was included in the scheme.

18. Therefore out of these three writ petitions the question of application of Article 26 need be considered only in Khadim Husain's case.

19. Article 26 relates to the freedom to manage religious affairs. It reads thus :-

"26. Subject to public order, morality and health, every religious denomination or any section thereof shall have the right -

(a) to establish and maintain institutions for religious and charitable purposes ;

(b) to manage its own affairs in matters of religion ;

(c) to own and acquire movable and immovable property; and

(d) to administer such property in accordance with law.

20. In *Commr. Hindu Religious Endowments Madras v. Sri Lakshmindra Tirtha Swamiar*,⁷ the Supreme Court quoted with approval the dictionary meaning of the word "denomination" which says that a "denomination" is a collection of individuals classed together under the same name, a religious sect or body having a common faith and organization and designated by a distinctive name.

The Supreme Court added that Article 26 contemplates not merely a religious denomination but also a section thereof. It is not clear in the case before us whether the right under Article 26 is claimed in favour of Khadim Husain the Mutwali or the Waqf or God almighty in whom the land is said to vest. It is doubtful whether any one of these can be called a "religious denomination" as contemplated by Article 26. Neither the Mutwali nor the Waqf can be called a collection of individuals classed together under the same name. Secondly from the objects of the Waqf it is clear that the ultimate beneficiary is charity and not any religious institution etc. Therefore even if there be some sort of a denomination, it can hardly be called a religious denomination.

21. Lastly, it is now well settled by the decision of the Supreme Court (See *State of Bihar v. Sir Kameshwar Singh*,)⁸ that Article 26 does not prevent property belonging to a religious body from being acquired. For all these reasons we think that none of the petitioners can legitimately claim the protection of Article 26. There is thus no substance in the last ground urged by the petitioners.

22. The petitioners have failed to substantiate any of the grounds on which they attack the acquisition proceedings. The writ petitions must be and are hereby dismissed. The petitioners in each one of these petitions shall pay the costs of the respondents.

Petition dismissed.

Cases Referred.

1. AIR 1965 All 599
2. 1931 All LJ 475: (AIR 1931 PC 149)
3. 1931 All LJ 475: (AIR 1931 PC 149)
4. AIR 1966 SC 1593
5. (Writ Petn. No. 814 of 1969) (All)
6. (Writ Petn. No. 2109 of 1969) decided on 19-11-1970 (All)
7. AIR 1954 SC 282
8. AIR 1952 SC 252