

# ALLAHABAD HIGH COURT

Riaz Uddin

Vs.

State of U.P

Special Appl. No. 109 of 1971 connected with Special Appls. Nos. 110 and 111 of 1971. against order of B.N. Lokur, J

(Satish Chandra and N.D. Ojha, JJ.)

20.01.1971. 27.10.1972

## JUDGMENT

### **Satish Chandra, J.**

1. These three special appeals raise common questions. They are directed against a common judgment dismissing three writ petitions. In the writ petitions, the appellants had challenged the acquisition of land in execution of improvement schemes framed by the Meerut Improvement Trust and continued by the Avas Evam Vikas Parishad.

2. An improvement scheme called "Scheme No. 3 - Housing Accommodation and Street Scheme lying between Meerut Garhmukteshwar and Meerut Hapur Roads" was framed by the Meerut Improvement Trust. Notice of this scheme as required by Section 36 of the U. P. Town Improvement Act, 1919 was published in the State Gazette of 7th January, 1967. The area comprised in the scheme included land in four villages, all situate outside the municipal limits of Meerut. The notice invited objections. Ninety nine persons filed forty-five objections. The Chairman of the Improvement Trust visited the area involved in the scheme and heard oral representations from various groups of landholders in the area. The appellants' case is that they had no knowledge of these proceeding and they could not either file objections or make representations to the Chairman at the time of his visit.

3. By a Notification of 7-12-1967 the State Government extended the provisions of the Uttar Pradesh Avas Evam Vikas Parishad Adhiniyam, No. 1 of 1966 (which we shall call the Parishad Act) to the areas which were till then under

the jurisdiction of the Improvement Trust, Meerut. As a result of this Notification the Town Improvement Act stood repealed in respect to its application to this area (vide Section 96 (1) of the Parishad Act). Under Section 97 of the Parishad Act the improvement schemes pending before the Improvement Trust, stood transferred to the U. P. Avas Evam Vikash Parishad, (hereinafter called the Parishad) constituted under the Parishad Act. The Parishad was to proceed further with the schemes or their execution from the stage at which it stood transferred to it.

4. The Parishad took up the Housing Accommodation and Street Scheme No. 3; it disposed of the objections, and as required by Section 31 (1), referred the scheme to the State Government for sanction. The State Government sanctioned the Scheme and the sanction was published in the Gazette of 23rd November, 1968, in accordance with Section 32 (1) of the Parishad Act.

5. In pursuance to Section 55 (1) of the Parishad Act the Parishad commenced proceedings for the acquisition of land required for the execution of this scheme. Notice under Section 9 of the Land Acquisition Act was published on 18th November, 1969. At this stage the appellants instituted writ petitions. They challenged the validity of the acquisition proceedings on several grounds which, however, failed and the writ petitions were dismissed by the judgment under appeal.

6. Learned counsel for the appellants pressed before us three points:-

(1) The Notification of the scheme did not comply with the requirements of Sections 4 and 6 of the Land Acquisition Act.

(2) Section 38 of the Town Improvement Act violated Article 14 of the Constitution; it being non-severable, the provisions of the Town Improvement Act as a whole were void.

(3) An incomplete scheme framed by the Improvement Trust could not validly be transferred to the Parishad.

7. Section 56 of the Town Improvement Act provides that the Improvement Trust may acquire land required for carrying on any of the purposes of the Act under the provisions of the Land Acquisition Act, 1894 as modified under Section 58 and by the Schedule to that Act. Clause 2 of the Schedule provides

that the first publication of a notice of an improvement scheme under Section 36 of the Act shall be substituted for and have the same effect as publication of a Notification under Section 4 (1) of the Land Acquisition Act.

8. 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 the Act. Clause 2 (2) of the Schedule, inter alia, provides that a Notification under Section 32 (1) of the 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.

9. For the appellants it was urged that the provisions of the Schedules of both the Acts equated the Notifications issued under Section 36 of the Town Improvement Act with the Notification under Section 4 (1) of the Land Acquisition Act, and the Notification under Section 32 (1) of the Parishad Act with the Notification under Section 6 of the Land Acquisition Act. Therefore, the Notifications must comply with the provisions of Sections 4 and 6 of the Land Acquisition Act. One requirement of Section 6 of the Land Acquisition Act is that the land covered by the Notification should be adequately identified in the Notification. This was not done by the Notification issued under Section 32 (1) of the Parishad Act. For this reason this Notification was void.

10. The relevant provisions of the Schedules to both the Acts say that the Notifications issued under those Acts "shall be substituted for and have the same effect" as publication of the Notification under Sections 4 (1) and 6 of the Land Acquisition Act. The Notifications issued under the Town Improvement Act and the Parishad Act operate as substitutes for Notifications under Sections 4 and 6 of the Land Acquisition Act. In addition, the Notifications under those Acts have the same effect as the publication of a Notification under Section 4 (1) and as a declaration under Section 6 (1) of the Land Acquisition Act. Clause (2) of the Schedule create a fiction whereby the Notifications under the Town Improvement Act and the Parishad Act are to be deemed to be and having the same effect as Notifications under Sections 4 and 6 of the Land Acquisition Act.

11. In our opinion, the fiction created by the Schedules precludes the making or the publication of a Notification under Section 4 (1) or Section 6 (1) of the Land Acquisition Act. The Notifications issued under the Town Improvement Act and the Parishad Act are themselves deemed to be and having the same effect as Notifications under the Land Acquisition Act. If the Notifications under Section 36 of the Town Improvement Act and Section 32 (1) of the Parishad Act comply with the requirements of those provisions, and as such are valid Notifications under those Acts, they by operation of law have effect and operate as Notifications under Sections 4 and 6 of the Land Acquisition Act. In view of this fiction, the Improvement Trust or the Parishad is exempted from making or publishing a Notification under Sections 4 and 6 of the Land Acquisition Act. No Notification is required to be issued under Sections 4 and 6 of the Land Acquisition Act. Hence the Notification issued under Section 36 of the Town Improvement Act and under Section 32 (1) of the Parishad Act need not be strictly in accordance with the provisions of Sections 4 and 6 of the Land Acquisition Act. Those notifications are not required to fulfill the requirements of Sections 4 and 6. If they are valid Notifications under the provisions of the Town Improvement Act and the Parishad Act they exclude the necessity of issuing a Notification under Sections 4 and 6 of the Land Acquisition Act. Those Notifications cannot be struck down because they do not fulfill the requirements of Sections 4 and 6 of the Land Acquisition Act. Their validity cannot be tested on the analogy of the requirements of Section 4 (1) or 6 (1) of the Land Acquisition Act. Even if Sections 4 (1) and 6 (1) of the Land Acquisition Act required that the Notification should give particulars of land to be acquired, that requirement cannot be imported into the Notifications issued under Section 36 of the Town Improvement Act or Section 32 (1) of the Parishad Act, because those provisions make no such condition. It was not disputed that the Notifications complied with the provisions of Section 36 of the Town Improvement Act and Section 32 (1) of the Parishad Act. The First point urged in support of these appeals has, in our opinion, no substance.

12. The second point raised for the appellants was that Section 38 of the Town Improvement Act violated Article 14 of the Constitution. Section 36 of the Town Improvement Act requires the Improvement Trust to cause a notice of the improvement scheme containing the matters mentioned in clauses (a), (b) and (c) of its sub-section (1) to be published weekly for three consecutive weeks in

the official Gazette and a local newspaper or newspapers, with a statement of the period within which objections will be received. Section 38 of the Act requires service of notices on every individual whose name appears in the municipal assessment list as being liable to pay any tax assessed on the building or land which is proposed to be acquired in executing the scheme. On its language Section 38 provides for service of individual notices on all owners of buildings or land situated within municipal limits. Even though land situated outside municipal limits may be acquired in execution of an improvement scheme, Section 38 or any other provision of the Town Improvement Act does not oblige the Improvement Trust to serve individual notices on owners of land situated outside the municipal limits. From the point of view of acquisition proceedings the owners of land outside the municipal limits constitute the same group along with the owners of land within the municipal limits. The submission was that Section 38 makes an invidious discrimination adverse to the owners of land situated outside the municipal limits and for this reason it violated Article 14 of the Constitution.

13. In our opinion, it is not necessary to express any opinion on this point. Even if Section 38 is assumed to be discriminatory, it is clearly severable.

14. Section 40 of the Town Improvement Act requires the Trust to consider the objections filed under Section 36 as well as, under Section 38 to any improvement scheme and thereafter either to abandon the scheme or apply to the State Government for its sanction. If the State Government sanctions the scheme the sanction is notified under Section 42 of the Act. For the scheme devised by the Town Improvement Trust the service of notice under Section 38 is a requirement in addition to the basic factors which are the publication of a notice under Section 36, consideration of the objections under Section 40 and then sanction of the State Government. The scheme of the Act does not indicate that the Legislature would not have enacted this scheme without Section 38. Section 38 being severable the Notification under Section 36 could not be struck down. In the present case, the subsequent proceedings were conducted under the Parishad Act. They could not be affected by the invalidity of Section 38 of the Town Improvement Act.

15. We did not hear learned Counsel elaborating the third point. There is no

merit in it. Section 97 (3) of the Parishad Act provides that every scheme and all proceedings relating thereto under the U. P. Town Improvement Act, 1919 shall stand transferred to the Board, which shall proceed further with the scheme or execution thereof from the stage at which it was transferred to it, in accordance with the corresponding provisions of this Act. Its provisions state that the Board may, if it thinks fit, recall any step or proceeding already gone through under the said Act and take that step or proceeding afresh under the corresponding provisions of this Act. It will be seen that the transfer of a scheme takes place at the stage at which it is pending on the appointed day; and the Board, (which we have called Parishad) is to continue with the scheme or the execution thereof from that stage onward. The Board can recall any step or proceeding already gone through by the Improvement Trust. These provisions leave no room for doubt that a scheme framed by the Improvement Trust but not completed, also stands transferred to the Parishad; and it has jurisdiction to continue it.

16. The various points urged in support of the appeals having failed, they are dismissed with costs.

Appeal dismissed.