
(1981) 02 AHC CK 0043

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 844-C of 1980

Bharat Sewak Samaj Sahkari Griha Nirman Samiti
Ltd, Varanasi

APPELLANT

Vs

State of Uttar Pradesh and others

RESPONDENT

Date of Decision : 20-02-1981

Acts Referred:

Constitution of India, 1950 — Article 226
Land Acquisition Act, 1894 — Section 4, 6(1)
Uttar Pradesh Avas Evam Vikas Parishad Adhiniyam, 1965 — Section 28, 32
Uttar Pradesh Urban Planning and Development Act, 1973 — Section 15

Citation : (1981) 02 AHC CK 0043

Hon'ble Judges : Satish Chandra, CJ and A.N.Varma, J

Final Decision : Dismissed

Judgement

A. N. Verma, J.

This petition is directed against an order dated 24121979 passed by the Development Authority, Varanasi, constituted under the U.P. Urban Planning and Development Act, 1973, rejecting an application filed by the petitioner for approval of a plan submitted by it for carrying out a Housing Scheme at Bajar Diha, Varanasi.

The petitioner is a Cooperative Housing Society. Its object is stated to be development of lands acquired by it in a planned manner with a view to laying out residential colonies for its members. The petitioner claims to have purchased plots Nos. 93, 94 and 97 at village Ranipur Bajar Diha in the city and district of Varanasi for establishing a residential colony thereon from one Sri Ashok Kumar Varma under a sale deed dated 1511976. It prepared a plan for the construction of a residential colony to be named as "Sheoraj Nagar" over the aforesaid plots and submitted the same under Section 15 of the Urban Planning and Development Act, 1973 for the approval of the Development Authority, Varanasi. The said application was, however, rejected by the Development Authority and the rejection was conveyed through its letter dated 24121979, a true copy of

which is Annexure "2" to the petition. The ground disclosed in the said letter is that the area where the aforesaid plots are situate is already the subjectmatter of a Housing Scheme introduced under the U. P. Avas Evam Vikas Parishad Adhiniyam, 1965 (hereinafter referred to as the Adhiniyam).

The above order of the Development Authority, Varanasi has been assailed in the petition on a number of grounds, which will be dealt with in detail later in this judgment. Shortly, the contention raised in the petition is that the scheme which was initiated under the aforesaid Adhiniyam by the Parishad constituted there under had lapsed both in fact as well as by operation of various statutory provisions referred to in the petition. That being so, it is contended in the petition, the supposed existence of the Housing Scheme could not legally constitute a valid ground for rejecting the petitioner's application for approval.

A counter affidavit has been filed on behalf of U. P. Avas Evam Vikas Parishad, Lucknow (respondent no. 3) in which it has been stated that proceedings for implementing a Housing Scheme were lawfully initiated under the Adhiniyam by the Parishad with the publication of a Notification on 2221972 under Section 28 thereof. Notices were thereafter also issued under Section 29 of the Adhiniyam to the individual tenureholders, including Sir Ashok Kumar Varma. In response to that Notification and the individual notices, no objections were filed by Sri Ashok Kumar Varma and in spite of the fact that notices had already been issued by the Parishad under Sections 28 and 29, the aforesaid plots were sold by Sri Ashok Kumar Varma to the petitioner on 1511976. While the proceedings for implementing the said Housing Scheme were still pending, the U.P. Urban Planning and Development Act, 1973 was enacted and subsequently the city of Varanasi was declared a "Regulated area" under Section 3 of the same Act. As a consequence, the aforesaid scheme was transferred for further implementation to the Varanasi Development Authority. Necessary sanction of the State Government under Section 59 of the Development Act, 1973, to continue the scheme has already been applied for, and that the matter was currently receiving the consideration of the State Government. As soon as the necessary formalities have been completed, the Notification under Section 32 (i) of the Adhiniyam would be issued. It is further asserted that the scheme initiated under the Adhiniyam is very much alive, and that the allegation that the scheme has lapsed or that it has been dropped is wrong and unfounded.

The aforesaid order dated 24121979 was assailed by the learned counsel for the petitioner on the ground that inasmuch as, according to his submission, the scheme initiated by the Parishad under the Adhiniyam had factually and legally lapsed, the Development Authority must be held to have refused permission to the petitioner" on an irrelevant or nonexistent ground.

The argument that the scheme initiated by the Parishad had lapsed by operation of law, was founded on the following grounds.

The first ground was developed thus ; Under clause (2) (i) of the Scheme to the

aforesaid Adhiniyam, the publication in the Gazette of the Notification under Sec. 28 of the Adhiniyam has been equated with the publication of the Notification under subsection (1) of Section 4 of the Land Acquisition Act, and under clause (2) (ii) of the aforesaid Schedule, the publication of the Notification under Section 32 of the Adhiniyam is said to have the same effect as the declaration by the State Government under Section 6 of the Land Acquisition Act. That being so, the argument went on, it must follow as a necessary corollary that the first proviso to Section 6 (1) of the Land Acquisition Act, which lays down that no declaration in respect of any particular land covered by a Notification under Section 4 which was published after the commencement of the Land Acquisition (Amendment & Validation) Ordinance 1967 shall be made under Section to (1) after the expiry of three years from the date of such publication, would apply equally to the publication of the Notification under Section 32 of the Adhiniyam. Consequently, in view of the admitted fact that no Notification under Section 32 of the Adhiniyam has yet been issued since the publication of the Notification under Section 28 of the Adhiniyam in the year 1972, the Notification under Section 28 must be held to have lapsed, and with it, the scheme itself.

Having heard learned counsel for the parties and given the matter a careful thought, we find no substance in the above argument. In *Satish Kumar Agarwal v. State* 1979 A.L.J. 1201 a Division Bench of this Court had the occasion to analyse the various provisions of the Adhiniyam including, in particular, Sections 28 and 32 of the Adhiniyam as well as the provisions of the Land Acquisition Act as applicable to the schemes under the Adhiniyam. The Division bench held that the mere fact that the notices issued under Sections 28 and 32 of the Adhiniyam are to have the effect of Notifications issued respectively under Sections 4(1) and 6 of the Land Acquisition Act, was no ground for holding that in regard to schemes sought to be implemented under the Adhiniyam, the provisions of Sections 4 and 6 of the Land Acquisition Act must be complied with in their strictness. The Division Bench has observed that the Adhiniyam is a complete Code in itself and that the authorities are not required to issue fresh Notifications under the Land Acquisition Act. The Division Bench followed an earlier Division Bench decision of this Court in *Riaz Uddin and others v. State of U. P. and others* A.I.R. 1973 AH. 240. In the case of *Riaz Uddin and others* (supra), the Division Bench held that notification issued under Section 32 of the Adhiniyam need not be in strict compliance with the provisions of Section 6 of the Land Acquisition Act.

We are in agreement with the view expressed in the aforesaid decisions. In our opinion, there is no ground for reading into Section 32 of the Adhiniyam the limitations which have been incorporated in the first proviso to Section 6 (1) of the Land Acquisition Act. The Legislature has not laid down any period of time within which the Board or the State Government must sanction a Housing or Improvement Scheme submitted to it for approval under Section 32 of the Adhiniyam and we see no warrant for reading into the Adhiniyam restrictions such as those which have been placed for issue of a Notification under Section 6

(1) of the Land Acquisition Act. Another observation which we wish to make is that we are concerned here with the validity of the Housing Scheme and not with the proceedings for acquisition of land for enforcement of that scheme. We see no ground for holding that a scheme validly initiated under Section 28 becomes void or unenforceable merely because the Notification under Section 32 (1) approving the scheme is not issued within the period mentioned in the first proviso to Section 6 (1) of the Land Acquisition Act.

It is, however, not necessary for us to dwell on this point further as we find that the question whether the limitation of three years spoken of in the first proviso to Section 6 (1) of the Land Acquisition Act, will also apply to acquisitions under the Adhiniyam, has already been answered in the negative by a Division Bench of this Court in the case of *Khadim Hussain v. State of U. P* A.I.R. 1973 All. 132. The Division Bench held, after an exhaustive analysis of the various provisions, that the said limitation cannot apply to the publication of a Notification under Section 32 (1) of the Adhiniyam. We are in agreement with the view expressed therein. We have followed that view in a recent case, namely, *Gauri Shanker and others v. State and others* Civil Misc. Writ No. 1247 of 1979 decided on 1321981. We adhere to that opinion and hold that the scheme has not lapsed merely because the Notification contemplated under Section 32(1) of the Adhiniyam was not issued within three years of the Notification under Section 28. The first ground thus fails.

The second ground urged was that under Section 59 of the U. P. Urban Planning and Development Act, 1973, the Adhiniyam stands repealed and consequently the scheme initiated thereunder not having been followed up by a Notification under Section 32 before the commencement of the Development Act, 1973, must also be deemed to have lapsed. We cannot agree. Section 59 (1) (a) of the Planning and Development Act, 1973, itself saves all those schemes in regard to which a notification under Section 28 had already been issued before the declaration of the area comprised therein as Development Area under the Development Act, 1973, where steps for obtaining the approval of the State Government had been initiated. In the present case, it has been averred in the aforesaid counteraffidavit that the steps for obtaining the approval of the State Government have already been taken and that the matter was receiving consideration of the State Government. The Scheme in question is, therefore, saved by Section 59 upon plain terms thereof. The second ground upon which the legal existence of the Scheme was assailed thus also fails.

The third and last submission was that the Scheme had in fact been abandoned by the authorities. This allegation has been refuted in the aforesaid counteraffidavit. In the counteraffidavit, referred to above, it has been clearly asserted that the scheme has not been dropped, and, that as soon as approval was received from the State Government, the Notification under Section 32 (1) will be issued. We have no reason to doubt the correctness of this averment. Besides, the petitioner has failed to furnish any such facts as may justify the

conclusion that the scheme in question has been abandoned by the authorities.

No other point was urged in support of the petition.

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