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**(2004) 05 AHC CK 0052**  
**In the Allahabad High Court**  
**Case No : C.M.W.P. No. 17094 of 2002**

Dheeraj Singh and Others

APPELLANT

Vs

Chairman, Avas Evam Vikas Parishad and Others

RESPONDENT

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**Date of Decision :** 11-05-2004

**Acts Referred:**

Land Acquisition Act, 1894 — Section 11A

Uttar Pradesh Avas Evam Vikas Parishad Adhiniyam, 1965 — Section 28, 32

**Citation :** (2004) 3 AWC 2056

**Hon'ble Judges :** R.S. Tripathi, J;M. Katju, J

**Bench :** Division Bench

**Advocate :** Ajay Kumar Sharma and Murlidhar, for the Appellant; Pankaj Mithal and Vinay Khare, S.C., for the Respondent

**Final Decision :** Dismissed

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## Judgement

M. Katju, J.—This writ petition has been filed against the impugned notifications dated 2.8.1997 and 4.12.1999 Annexures 4 and 5 to the writ petition under Sections 28 and 32 of the U.P. Avas Evam Vikas Parishad Adhiniyam, 1965 by which certain land was sought to be acquired under the said Adhiniyam for a public purpose, namely, the acute housing problem in Saharanpur.

2. Heard learned counsel for the parties.

3. It is alleged in paragraph 3 of the writ petition that the petitioners are co-tenure holders of certain plots in village Mavi Kalan in district Saharanpur, the details of which are given in the said paragraph. The petitioner's agricultural land has been included in the housing scheme framed by the U.P. Avas Evam Vikas Parishad (hereinafter referred to as "Parishad") vide paragraphs 6 and 7 of the writ petition.

4. Sections 28 and 32 of the U.P. Avas Evam Vikas Parishad Adhiniyam are analogous to Sections 4 and 6 of the Land Acquisition Act. It is alleged that no award has yet been passed and hence in view of Section 11A of the Land

Acquisition Act the impugned notifications have lapsed. It is also urged by the petitioners that there was no urgency to invoke the provisions of Section 17 of the Land Acquisition Act. It is alleged that the Parishad had already dropped five schemes earlier and hence there was no justification to acquire the petitioner's agricultural and grove land.

5. A counter-affidavit has been filed by the Parishad and we have perused the same. In paragraph 5 of the counter-affidavit it is alleged that the Parishad framed a housing scheme known as Delhi Road Bhumi Vikas Evam Grahasthan Yojna No. 8 in district Saharanpur. For the purpose of the scheme as per the layout the Parishad proposed to acquire 199,30 acres of land and hence a notification u/s 28 was issued on 17.7.1997. The notification disclosing the area of the acquired land by boundaries was duly published weekly for three consecutive weeks in the Official Gazette and in two daily newspapers including one in Hindi and also by publication of its contents in the locality. Thereafter the Parishad invited objections u/s 29 and individual notices were also served upon all persons whose land was sought to be acquired. Various persons including the petitioners filed objections and hearing took place on 11.12.1997 and 12.12.1997 before the Niyojan Samiti. True copy of the report of the Niyojan Samiti dated 12.12.1997 is Annexure C.A. 2 to the counter-affidavit. It is alleged in paragraph 10 of the counter-affidavit that the Niyojan Samiti gave proper hearing to all the objectors. Thereafter the Parishad submitted the scheme to the State Government for an estimated cost of Rs. 20 lacs. The State Government on due satisfaction sanctioned the scheme u/s 31(2) of the Adhiniyam vide notification dated 11.11.1999 Annexure C.A. 3 to the counter-affidavit. The Parishad on receiving the sanction of the State Government notified the same u/s 32 of the Adhiniyam on 11.11.1999 vide Annexure C.A. 4 to the counter-affidavit.

6. It is alleged in paragraph 12 of the counter-affidavit that the land was urgently required and hence notification u/s 17 of the Land Acquisition Act was issued authorising taking over possession of the land immediately on the expiry of 15 days from the date of the notice. True copy of the notification u/s 17 dated 4.1.2000 is Annexure C.A. 5 to the counter-affidavit.

7. It is alleged in paragraph 13 of the counter-affidavit that the State Government vide order dated 25.1.2000 authorised the Collector, Saharanpur u/s 7 of the Act to take order for the acquisition of the land vide Annexure C.A. 6. In pursuance of the above individual notices u/s 9 of the Act dated 9.11.2001 were issued to all the recorded tenure holders including the petitioners. True copy of a sample notice issued u/s 9 is Annexure C.A. 7. In paragraph 15 it is alleged that the Collector, Saharanpur took possession of the acquired land and delivered it to the Parishad on 24.4.2002 in witness whereof a possession memo was executed vide Annexure C.A. 8 to the counter-affidavit. Hence it is alleged in paragraph 16 that possession of the land has been taken over by the Parishad and it has vested in it free from all encumbrances.

8. In paragraph 17 of the counter-affidavit it is alleged that the Parishad on

21.3.2002 before taking possession as per the direction of the Collector Saharanpur deposited the necessary amount of compensation amounting to Rs. 3,78,90,641 before the Collector vide deposit challan Annexure C.A. 9 to the counter-affidavit.

9. In paragraph 18 of the counter-affidavit it is alleged that the award u/s 11 of the Act is to be made by the Collector concerned and it is not within the domain of the Parishad. The Parishad has not delayed the declaration of the award u/s 11 nor has denied the payment of compensation. In paragraph 19 it is alleged that no prior sanction for acquiring the land has to be taken from the development authority in view of the notification dated 22.1.1983 issued by the Secretary, Avas Evam Vikas. U.P. Annexure C.A. 10 to the counter-affidavit.

10. In paragraph 22 of the counter-affidavit it is stated that the Parishad has already completed its scheme Nos. 1 and 5 in district Saharanpur. The said scheme on completion has been handed over to the local authorities. Presently scheme Nos. 8 and 9 are in progress.

11. In paragraph 23 it is alleged that the declaration of Saharanpur as notified area u/s 3 of the U.P. Urban Planning and Development Act in no way affects the authority of the Parishad to acquire the land in dispute for housing purpose. The Parishad has taken due permission from the State Government for the present scheme and there is no illegality. In paragraph 24 it is alleged that the entire procedure prescribed under the Adhiniyam was duly followed in acquiring the land in dispute and sanction for acquisition of the land was granted by the State Government on 11.11.1999. The declaration u/s 32 of the Adhiniyam is conclusive proof of the fact that the land has been acquired in accordance with law. There is a provision for appeal to the State Government u/s 32 (3) and the petitioner has already filed an appeal but they have also approached the High Court without awaiting the result of the appeal and hence this petition is not maintainable. It is alleged in paragraph 26 of the counter-affidavit that the petitioners were offered 80% of the estimated amount of compensation but they refused to accept the same and hence the same was deposited by the Parishad with the A.D.M. (Land Acquisition), Meerut. The petitioners can withdraw the same whenever they wish. The possession of the land was taken on 24.4.2002 after giving due notices of 15 day u/s 9 of the Act. In paragraph 28 it is stated that there was no requirement of seeking prior permission before initiation of the development scheme by the Parishad. The scheme has been sanctioned by the State Government and there is no violation of Section 59 of the U.P. Urban Planning and Development Act, 1973.

12. In paragraph 29 it is stated that at the relevant time Section 11A was not in existence. It was only introduced by Amending Act No. 68 of 1984. However, Section 11A of the Land Acquisition Act has not been incorporated in the Adhiniyam.

13. On the facts of the case we find no merit in this petition. The facts of the

case have already been stated above. The land was acquired after due notification under Sections 28 and 32 of the U.P. Avas Evam Vikas Parishad Adhiniyam and notices were issued to the landholders including the petitioners inviting objections and the objections were duly considered by the Niyojan Samiti which was delegated power u/s 12 read with Rules of 1968. The State Government vide notification dated 11.11.1999 sanctioned the scheme and thereafter the notification u/s 32 was issued on 4.12.1999. Notice for possession u/s 9 was given on 9.11.2001 and the possession of the land was taken on 24.4.2002 vide possession memo Annexure C.A. 8. The Parishad has deposited the estimated compensation vide Annexure C.A. 9.

14. As regards the contention that in view of Section 11A of the Land Acquisition Act the acquisition proceedings have lapsed it is now well settled that Section 11A does not apply to proceedings under the U.P. Avas Evam Vikas Adhiniyam Vide *Patharoo v. U.P. Avas Evam Vikas Parishad* 2002 (5) AWC 3665 which has been followed by a Division Bench of this Court in Writ Petition No. 13786 of 2002, *Ram Jeevan v. Secretary, U.P. Avas Evam Vikas Parishad*, decided on 15.3.2004. In the said decisions it has been held that the Adhiniyam is a self-contained code in itself and therefore the amended provisions of the Land Acquisition Act are not applicable. Moreover, even otherwise Section 11A does not apply because possession has been taken by the respondents as per possession memo dated 24.4.2002 (Annexure C.A. 8) vide Writ Petition No. 27317 of 2001. *Kaloo Ram v. State of U.P.*, decided on 5.3.2004. In *Kaloo Ram's* case (*supra*) it was also held (following several Supreme Court decisions) that urgency is a matter for the subjective satisfaction of the Government.

15. As regards the submission that the Parishad is not competent to acquire the land within the notified area of Saharanpur Development Authority without the prior permission of the State Government, in our opinion there is no merit in this submission. In fact the State Government granted sanction on 11.11.1999. This point is covered against the petitioner by the decision of the Supreme Court in *U.P. Avas Evam Vikas Parishad and another Vs. Friends Co-op. Housing Society Ltd. and another*, and *U.P. Avas Evam Vikas Parishad v. Ram Kishan* 2002 (2) AWC 1040 : AIR 2002 SC 1056. It has been held therein that the approval of the scheme by the State Government at any stage is sufficient and that prior approval is not necessary and once approval is granted all previous acts and actions get validated.

16. It has been repeatedly held by the Supreme Court and this Court that acquisition for housing purpose is an urgent matter and is for a public purpose vide Writ Petition No. 23552 of 1999, *Sarva Hitkari Sahkari Avas Samiti Ltd. v. State of U.P.*, decided on 5.3.2004, *State of U.P. v. Pista Devi* AIR 1986 2025, etc.

17. Thus, there is no force in this writ petition and it is dismissed.