

(1964) 03 AHC CK 0016

In the Allahabad High Court

Case No : Civil Miscellaneous Writ No. 1882 of 1963

N.C. Upadhya and Others

APPELLANT

Vs

State of Uttar Pradesh and Others

RESPONDENT

Date of Decision : 06-03-1964

Acts Referred:

Constitution of India, 1950 — Article 226, 245, 31, 31(2), 31(5)

Land Acquisition Act, 1894 — Section 11

Uttar Pradesh Nagar Mahapalika Act, 1959 — Section 346, 365(4), 577, 580, 581

Uttar Pradesh Town Improvement Act, 1919 — Section 36, 42

Citation : AIR 1965 All 356

Hon'ble Judges : D.D. Seth, J

Bench : Single Bench

Advocate : Brijlal Gupta and S.B. Chaudhary, for the Appellant; A.B. Saran and N.D. Pant, for the Respondent

Final Decision : Allowed

Judgement

D.D. Seth, J.—This is a petition under Article 226 of the constitution.

2. The petition has been filed by fifty petitioners, the first forty-nine petitioners are living in Bungalows Nos. 9 and 11, Bank Road, Allahabad and other outhouses and the petitioner No. 50 is the registered Co-operative Housing Society with its registered office at No. 11, Bank Road, Allahabad. Some of the petitioners are members of this Cooperative Housing Society. The opposite parties Nos. 4 and 5 are the owners of the two bungalows. The erstwhile Improvement Trust, Allahabad, framed a scheme styled as "Bank Road Housing Scheme" u/s 36 of the U. P. Town Improvement Act (hereinafter called the Act) in July 1957. The scheme was framed in order to provide additional housing accommodation in the vicinity of the University and the district Courts of Allahabad. For the purpose of the scheme it was proposed to acquire bungalows Nos. 9 and 11, Bank Road. These bungalows consist of an area of about six acres and it was proposed to build 41 new houses in this area.

A notice u/s 38 of the Act regarding the proposed scheme was served on the first forty-nine petitioners as occupiers of the premises and they were asked to file their objections. The petitioners tiled their objections mainly on the ground that the scheme was not for a public purpose and that the scheme aimed at creating a slum near the University and was, therefore, not an improvement scheme. By a notification dated 13th May 1958 published on 17th May 1958 in the U. P. Gazette the State Government sanctioned the scheme u/s 42 of the Act. The petitioners and other residents of the locality including some teachers of the University of Allahabad sent representations to the Improvement Trust and later to the Nagar Mahapalika and to the State Government opposing the scheme. They pleaded that the scheme was not in the interest of the University and it was prejudicial to the women's hostel of the University which is located near bungalows Nos. 9 and 11, Bank Road. They also maintained that the construction of 41 houses in a small area of about six acres would be derogatory to the locality and to the women's hostel of the University.

The State Government, thereupon, sent a letter dated 4th November 1958 to the Registrar of the University agreeing to the acquisition of the land of the two bungalows directly by the University on the condition that the land must be acquired by the University within one year from the date of the issue of the notification sanctioning the scheme on 13th May 1958 failing which the Improvement Trust, Allahabad would be free to acquire the land and execute its own scheme which had already been sanctioned by the Government. It is mentioned in the petition that by a letter dated 6th May 1959 the Additional District Magistrate, Allahabad, dropped the scheme and subsequently the Land Acquisition Officer was directed to acquire the land for the University. No fresh notification was issued by the State Government for acquiring the land of the two bungalows for the University as required by Sections 4 and 6 of the Land Acquisition Act. The University was directed by the Land Acquisition Officer, Allahabad, to deposit about rupees four lakhs and odd as the estimated cost of the land but the money was not deposited by the University upto 31st March 1961. The Land Acquisition Officer then re-opened the old "Bank Road Housing Scheme" although no fresh notification reopening the scheme was issued by the State Government under the provisions of the U. P. Nagar Mahapalika Adhiniyam (hereinafter called the Adhiniyam) which had repealed the Act.

Under Section 577(c) of the Adhiniyam the land acquisition proceedings for the improvement scheme under the Act were to continue as If they had been initiated under the Adhiniyam. Section 365(4) of the Adhiniyam provides that acquisition proceedings for improvement schemes should be concluded at least upto the stage of making of awards within five years from the date of the notification of the scheme u/s 363 of the Adhiniyam unless time is extended by the State Government under the proviso to Section 365(4) of the Adhiniyam, The petitioners contend that time was not extended by the State Government and five years have already expired. They, therefore, maintain that the Special Land Acquisition Officer, Nagar Mahapalika has no jurisdiction to proceed with the

proceedings for acquiring the land of the two bungalows. They also maintain that the acquisition proceedings are illegal and without jurisdiction inasmuch as the Development Committee of the Nagar Mahapalika has not required the Mukhya Nagar Adhikari to frame a housing scheme for the petitioners as provided u/s 346 of the Adhiniyam.

The petitioners were informed by the Land Acquisition Officer that there was no housing scheme u/s 346 of the Adhiniyam. The Land Acquisition Officer, Nagar Mahapalika issued notices u/s 9 of the Land Acquisition Act to the petitioners to appear before him on 21st February 1963. The petitioners appeared before him and filed an application requesting him to intimate to them the basis of compensation which was proposed to be paid to the petitioners but the Land Acquisition Officer informed the petitioners that as they were only tenants of the premises there was no provision for any compensation being paid to them. According to the petitioners the Special Land Acquisition Officer has not yet given his final award and the Nagar Mahapalika is trying to evict the petitioners from their quarters and on 16th May 1963 some labourers along with an official of the Nagar Mahapalika came to the spot in order to demolish the buildings standing at Nos. 9 and 11 Bank Road. They were, however, persuaded to postpone the demolition for a few days.

The petitioners have, therefore, come to this Court and have prayed that certiorari be issued and the land acquisition proceedings being taken by the Special Land Acquisition Officer, Nagar Mahapalika in connection with the "Bank Road Housing Scheme" be quashed. They have also prayed that the Land Acquisition Officer be commanded not to proceed further with the scheme or with the land acquisition proceedings in connection with the scheme.

3. Counter-affidavits have been filed on behalf of the Nagar Mahapalika, Allahabad and Smt. Gujjan Devi owner of bungalow No. 9, Bank Road. The petitioners have filed their rejoinder affidavits.

4. I have heard Sri Brijlal Gupta the learned counsel for the petitioners, Sri N.D. Pant the learned counsel appearing for the Nagar Mahapalika and Sri A.H. Saran appearing for Smt. Gaujjan Devi.

5. Sri Brijlal Gupta submitted that there being no simultaneous Housing scheme for the rehabilitation of the petitioners u/s 346 of the Adhiniyam the acquisition proceedings taken in respect of the scheme are illegal and without Jurisdiction and further that the period of five years as provided by Section 365(4) of the Adhiniyam having expired on 13th May 1963 the land acquisition proceedings taken by the Special Land Acquisition Officer, Nagar Mahapalika are without jurisdiction. It is next submitted that the Land Acquisition Officer should have complied with para. 42CA of the Manual of Orders of the Government in the Revenue Department and should have disclosed to the petitioners the basis of compensation proposed to be paid to them. He also contended that the land acquisition proceedings are in violation of Article 31 of the constitution inasmuch

as no provision for payment of compensation to the petitioners has been made, it was further contended that in an area of about six acres of land the scheme proposed to construct 41 houses and according to the building regulations of the Nagar Mahapalika no construction can be made on less than half acre of land and, therefore, the building regulations of the Nagar Mahapalika are in violation of Article 14 of the Constitution.

It was submitted by Sri Brijlal Gupta that the scheme is not for a public purpose at all but is a business scheme of the Nagar Mahapalika and as such it is a colourable exercise of power by the State Government. The learned counsel for the petitioners then contended that there being no order u/s 7 of the Land Acquisition Act, the land acquisition proceedings being taken by the Special Land Acquisition Officer, Nagar Mahapalika are without jurisdiction. Lastly it was submitted that the scheme having been abandoned once could not be re-started without there being a fresh notification in that behalf under the provisions of the Adhiniyam.

6. Sri N.D. Pant raised a preliminary objection that the petition was not maintainable. He submitted that no petition under Article 226 could be filed by the Co-operative Housing society which is a registered body as its Interest was not concerned by the scheme and no personal right of the Co-operative Housing Society was hit by the Scheme. He also submitted that a joint petition on behalf of fifty petitioners was not maintainable as each one of the petitioners had a separate and individual right. The learned counsel contended that the petitioners, according to paragraph 3 of their re-joinder affidavit, have prayed that the petition be treated as petition on behalf of petitioner No. 1 who has no locus standi to file the petition inasmuch as there is no averment in the petition that the petitioner No. 1 was residing in bungalow No. 9, Bank Road on 15th February 1958 and 13th May 1958 on which dates the notifications under Sections 40 and 42 of the Act were issued respectively and that he had not filed any objection challenging the scheme before the Land Acquisition Officer. Sri Pant also submitted that this Court will not restrain the Special Land Acquisition Officer from carrying out his statutory duties specially when the petitioners have not prayed for the quashing of the Scheme.

Sri Pant also urged that the petitioners have not been vigilant in filing the petition inasmuch as the notification u/s 36 of the Act was issued in July 1957 and the notification u/s 42 of the Act was Issued on 13th May 1958 while the petition was filed on 22nd May 1963 and therefore the petitioners should not be permitted to challenge the scheme on account of the inordinate delay in filing the petition. He also contended that u/s 42 of the Act publication of a notification under Sub-section (1) of that section in respect of any scheme shall be conclusive evidence that the scheme has been duly framed and sanctioned. This conclusive evidence had been in existence since 13th May 1958 and the petitioners challenged the land acquisition proceedings for the first time by filing this petition on 22nd May 1963, i.e., they took six years to challenge those

orders. The last submission of Sri Pant is that the scheme is for public purpose and is a valid scheme and has become final and that there has been no colourable exercise of power by the State Government in framing it.

7. Sri A.B. Saran the learned counsel appearing for Smt. Gujjan Devi submitted that no grounds have been made out by the petitioners for the quashing of the land acquisition proceedings in pursuance of the scheme.

8. In my opinion, there is no merit in the preliminary objections raised by Sri N.D. Pant. Sri Pant conceded that the petition will be maintainable in so far as one petitioner is concerned but not on behalf of the others as each one of the petitioners had a separate and Individual right to file a petition. In this connection he relied on Uma Shankar Rai and Others Vs. Divisional Superintendent, Northern Railway, Lucknow and Others, In the instant case, however the right of the petitioner is joint, common and inseparable. All the fifty petitioners are the tenants of the bungalows sought to be acquired and, therefore, have a common cause of action. They are jointly interested in resisting the acquisition of the land. This joint right is inseparable. Each relief claimed by the petitioners is directed to an assertion of a common claim that the acquisition proceedings are bad. In any case the petitioner No. 1 is one of the tenants occupying portion of the two bungalows and is affected by the acquisition proceedings.

In paragraph 17 of the petition it is stated that the Special Land Acquisition Officer of the Nagar Mahapalika issued notices u/s 9 of the Land Acquisition Act to the petitioners to appear before Him. This statement has not been controverted in the counter-affidavit filed by the Superintendent, Vikas Vibhag of the Nagar Mahapalika. Notices having been issued to petitioner No. 1, he has a right to resist the acquisition. He, being a tenant of the two bungalows, has a right to resist the acquisition and, therefore, has a right to file the petition. It does not matter if the petitioner No. 1 was not residing in bungalow No. 9, Bank Road on 15th February 1958 and 13th May 1958 on which dates the notifications u/s 40 and 42 of the Act were issued respectively and that he had not filed any objection challenging the scheme before the Land Acquisition Officer.

9. It is true that the petitioners have not prayed for the quashing of the scheme in the petition but that relief can be granted to them under the general relief prayed for. Besides praying for specific reliefs the petitioners have also prayed that any other writ, order or direction be issued which this Court may deem fit and proper in the circumstances of the case to which the petitioners may be entitled in law.

10. Regarding the submission of Sri Pant that that petition has been filed after a long delay it has to be noted that it has been admitted in the counter affidavit filed by the Superintendent Vikas Vibhag, Nagar Mahapalika that the original Bank Road Housing Scheme had been dropped by a letter of the Additional District Magistrate, Allahabad, dated 6th May 1959 which was to the following

effect:

"Drop proceedings as the University is acquiring this land. Informed Trust".

11. The petitioners contend that on account of the dropping of the scheme they were lulled into a false sense of security but the cause of action arose when the scheme was revived and there was an actual threat of demolition of the two bungalows, and when the petitioners were told by the Land Acquisition Officer that no housing scheme u/s 346 of the Adhiniyam had been framed and that they were only tenants of the premises and as such there was no provision for any compensation being paid to them, it must also be mentioned that the Special Land Acquisition Officer Issued notices to the petitioners to appear before him on 21st February 1963 and the petition was filed in this Court on 22nd May 1963 after giving the usual notice to the learned Standing counsel. It cannot, therefore, be said that the petition was filed after an inordinate delay, in any case there is no absolute bar to the filing of a petition under Article 226 of the Constitution on the ground of delay. If there is an attempt on the part of the officials of the Nagar Mahapallika to bypass the statutory provisions of the Adhiniyam this Court will not be deterred in using its extraordinary jurisdiction under Article 226 of the Constitution.

12. I, therefore, find no force in the preliminary objections. I now proceed to deal with the submissions made by Sri Brijlal Gupta.

13. Section 346 of the Adhiniyam deals with housing scheme and runs as follows:

"The Development Committee when it resolves that an improvement Scheme which is likely to displace persons be framed, shall also by resolution, require the Mukhya Nagar Adhikari to frame a scheme (herein called housing scheme) for construction, maintenance and re-management of such and so many dwellings and shops as it may consider ought to be provided for persons who:

(a) are displaced by the execution of any improvement scheme sanctioned under this Act, or

(b) are likely to be displaced by the execution of any Improvement scheme which it is intended to frame, or to submit to the State Government for sanction under this Act:

Provided that the State Government may for reasons to be recorded in writing exempt a Development Committee from the liability under this Section".

14. u/s 581 of the Adhiniyam the Act stood repealed with effect "from the appointed day, i.e., 1-2-1960. Sub-section (c) of Section 577 of the Adhiniyam provides that all proceedings for acquisition of land whether in pursuance of any scheme of Improvement or otherwise initiated under the U. P. Town improvement Act, 1919, the Cawnpore Urban Area Development Act, 1945, or the U. P. Municipalities Act, 1916 or any other enactment applicable to the area included in the City may be continued as if they had been initiated under this Act", in

paragraph 15 of the petition it is stated that the Development Committee of the Nagar Mahapalika "has not directed the Mukhya Nagar Adhikari to frame a re-housing scheme for the petitioners" u/s 340 of the Adhiniyam and that the State Government has also not granted any exemption from this mandatory provision to the Development Committee, By virtue of the fact that under Sub-section (c) of Section 577 of the Adhiniyam the scheme was to be continued as if It had been initiated under the Adhiniyam, Section 346 of the Adhiniyam will be fully applicable in the present case. The fact that a simultaneous scheme to be called the housing scheme u/s 346 of the Adhiniyam was not framed by the Mukhya Nagar Adhikari, has not been controverted in the counter-affidavit filed on behalf of the Nagar Mahapalika.

In paragraphs 20 and 21 of the counter-affidavit filed on behalf of the Nagar Mahapalika it is stated that the provisions of Section 346 of the Adhiniyam are not applicable in the Instant case which is a scheme already framed and sanctioned under the Act and that it is not disputed that no "re-housing scheme" has been framed u/s 346 of the Adhiniyam. in my opinion Section 34C of the Adhiniyam is mandatory in character. u/s 346 two schemes have to be framed, one by the Development Committee of the Nagar Mahapalika and the other by the Mukhya Nagar Adhikari. The two schemes are distinct. First the Development Committee of the Nagar Mahapalika has to pass a resolution for the framing of a re-housing scheme and in order to give effect to that scheme the Development Committee has also to pass a resolution requiring the Mukhya Nagar Adhikari to frame another scheme to be called the housing scheme. The two bodies which are charged u/s 346 of the Adhiniyam for the framing of the two schemes are different. The resolution requiring the Mukhya Nagar Adhikari to frame a housing scheme has to be simultaneously passed by the Development Committee when it resolves that an improvement scheme which is likely to displace persons is to be framed. Sri N.D. Pant in tills connection relied upon Sub-section (b) of Section 577 of the Adhiniyam which reads as follows:

"Any notice or notification or sanction of any Improvement scheme for the area included in the City issued under the U. P. Town improvement Act, 191 or or the Cawnpore Urban Area Development Act, 1940, shall be deemed to have been Issued under this Act and all further proceedings in furtherance of such scheme may be taken accordingly."

15. Sri Pant submitted that the stage of framing a housing scheme u/s 346 of the Adhiniyam had long passed. He submitted that the deeming provision u/s 577 of the Adhiniyam does not import the provisions of Section 346 of the Adhiniyam to the scheme which has been duly notified under the Act. He further submitted that under Sub-section (b) of Section 577 of the Adniniyam the scheme shall not be deemed to be under the Adhiniyam but any notice, notification or sanction of any improvement scheme shall be deemed to have been Issued under the Adhiniyam and all further proceedings in furtherance of such scheme have to be taken accordingly. He, therefore, urged that Section 346 of the Adhiniyam has no

relevance at all in the present case. I am afraid I do not agree with Mr. Pant, The simultaneous framing of a housing scheme must be held to be included in "all further proceedings in furtherance of such scheme" i.e. re-housing scheme. Under Sub-section (b) quoted above, a legal fiction is created and an imaginary state of affairs is deemed to exist. It was held in Commissioner of Income Tax, Delhi Vs. S. Teja Singh, that:

"It is a rule of interpretation well settled that in construing the scope of a legal fiction it would be proper and even necessary to assume all those facts on which alone the fiction can operate".

Their Lordships referred to the following oft-quoted observations of Lord Ashquith in East End Dwellings Co. Ltd, v. Finsbury Borough Council 1952 AC 109 at p. 132:

"If you are bidden to treat an imaginary state of affairs as real, you must surely, unless prohibited from doing so, also imagine as real the consequences and incidents which, if the putative state of affairs had in fact existed, must inevitably have flowed from or accompanied it. One of these in this case is emancipation from the 1939 level of rents. The statute says that you must imagine a certain state of affairs; it does not say that having done so, you must cause or permit your imagination to boggle when it comes to the inevitable corollaries of that state of affairs".

16. In the instant case the legal fiction goes further and Sub-section (b) of Section 577 says that all further proceedings in furtherance of a scheme may be taken accordingly". Another legal fiction is created by Sub-section (c) of Section 577 of the Adhiniyam which is much wider in scope. It lays down that

"all proceedings for acquisition of land whether in pursuance of any scheme or otherwise initiated under the U. P. Town improvement Act, 1919, the Cawnpore Urban Area Development Act, 1943, or the U. P. Municipalities Act, 1916 or any other, enactment applicable to the area included in the city may be continued as if they had been initiated, under this Act".

17. There is, therefore, no possible escape from the proposition that a necessary thing, namely, framing of a housing scheme cannot be omitted once it is proposed to frame a re-housing scheme under the Adhiniyam. In my view the Mukhya Nagar Adhikari of the Nagar Mahapalika was bound, to frame a housing scheme once a re-housing scheme framed under the Act had been deemed to be continuing under the provisions of the Adhiniyam. The acquisition proceedings taken by the Nager Mahapalika in respect of the "Bank Road Housing Scheme", in the absence of a simultaneous housing scheme for the rehabilitation of the petitioners u/s 346 of the Adhiniyam, are, therefore, clearly Illegal.

18. Section 365 of the Adhiniyam deals with acquisition of land acquired for improvement scheme. Sub-section (4) of this section runs as follows:

"All acquisition of land and interest in land for an improvement scheme

authorised under this Chapter shall be completed at least up to the stage of making of awards within a period of five years from the date of the notification of the Scheme u/s 363 and any land in respect of which the acquisition is not so completed and the owner and occupier thereof shall cease to be subject to any liabilities under this Chapter:

Provided that the State Government may in any particular case before the expiry of such period and reasons to be recorded in writing extend the period by one year".

The sub-section quoted above makes it clear that the making of awards must be completed within a period of five years from the date of the notification of the scheme and if for some reason or the other they have not been made then there would be no further liability on the owners and occupiers of the land sought to be acquired. In other words the improvement scheme will be deemed to have been abandoned. The proviso to Sub-section (4) of Section 365 authorises the State Government to extend the period of five years by one year in any particular case provided it does it before the period of five years expires and also provided it records reasons for extending the period in writing. In paragraph 13 of the petition it is stated that there is no order of the State Government extending the time of the scheme under the proviso to Section 365(4) of the Adhiniyam and from the date of the notification u/s 42 of the Act live years have already expired. In paragraph 17 of the Counter-affidavit filed on behalf of the Nagar Mahapalika it is stated that the time has been extended by the State Government under the Removal of Difficulties Order upto 30th September 1964. In other words the State Government by a general executive order has expended the period of five years. The proviso to Sub-section (4) of Section 365 of the Adhiniyam requires that the State Government may extend the period of five years in any particular case before the expiry of such period, after recording its reasons in writing. It is, therefore, clear that the state Government has to issue an individual order extending the period of five years in respect of each scheme and it cannot extend the period in case of all schemes by all the Nagar Mahapalikas of the State by a general order. The proviso to Sub-section (4) of Section 365 of the Adhiniyam speaks of "any particular case". It does not contemplate the extension of the period of five years by the State Government by a general order.

19. Section 580 of the Adhiniyam gives power to the State Government to remove difficulties and reads thus:

"(1) If any difficulty arises in giving effect to the provisions of this Act or, by reason of anything contained in this Act, to any other enactment for the time being in force, the State Government may, as occasion requires, by order direct that this Act shall during the period of twelve months after the appointed day have effect subject to such adaptations whether by way of modification, addition or omission as it may deem to be necessary and expedient.

(2) An order made under Sub-section (1) shall be laid as soon as may be before both the Houses of the Legislature".

20. Under the above section the State Government can issue Removal of Difficulties Order in two cases: (1) If any difficulty arises in giving effect to the provisions of the Adhiniyam, i.e., for the removal of difficulties which are inherent in the provisions of the Adhiniyam; and (2) If any difficulty arises by reason of anything contained in the Adhiniyam, to any other enactment for the time being in force. Under the proviso to Sub-section (4) of Section 365 of the Adhiniyam the State Government is authorised to extend the period of five years by one year. The scheme having been notified in May 1958 the period of five years expired in May 1963 and the State Government could extend the period under the proviso to Sub-section (4) of Section 365 of the Adhiniyam by one year i.e., upto May 1964. By issuing the Removal of Difficulties Order the State Government has, however, extended the period of the scheme upto 30th September 1964. u/s 580 of the Adhiniyam the State Government by a notification dated 1st February 1960 issued the U. P. Nagar Mahapalika (Kathinaion ko dur karne ki) (Tritiya) Agya 1960 which laid down that:

"During the period of one year from the coming into force of this order Sub-section (4) of Section 365 of the Uttar Pradesh Nagar Mahapalika Adhiniyam, 1959 shall have effect subject to the following modification:

The following shall be added as a second proviso after the existing proviso to Sub-section (4) of Section 365:

"Provided further that this sub-section shall not apply to any Improvement Scheme notified u/s 42 of the U. P. Town Improvement Act, 1910 or Section 60 of the Cawnpore Urban Area Development Act, 1945."

21. In other words this Order provided that during the period of one year from the coming into force of the Order the existing proviso to Sub-section (4) of Section 365 of the Adhiniyam will be deemed not to be in operation. This Agya was again amended by the State Government by the U. P. Nagar Mahapalika (Kathinaion ko dur karne ki) (Tritiya Sanshodhan) Agya, 1960 by which the existing proviso to Sub-section (4) of Section 365 was deemed not to be in operation for a period of twenty months. The period of twenty months was subsequently substituted by a period of forty four months by the State Government by issuing the U. P. Nagar Mahapalika (Kathinaion ko dur karne ki) (Tritiya) (Dwitiya sanshodhan) Agya in September 1963 and ordered that for the words "forty four months" the words "fifty six months" shall be substituted. In other words by passing these various Removal of Difficulties Orders the State Government has attempted to legislate and has in fact, added a second proviso after the existing proviso to Sub-section (4) of Section 365. This, in my view, the State Government had no, authority to do. The State Government has not tried to remove any difficulty. After the coming into force of the Adhiniyam the State Government had ample time upto May 1963 to extend the period under Sub-

section (4) of Section 363.

22. The question for consideration is whether u/s 580 of the Adhiniyam the State Government has the power to issue such Removal of Difficulties Orders and also what is the ambit and scope of such Orders. This form of delegation of power by the Legislature is a very common feature as the Legislature cannot possibly contemplate all the difficulties which may arise in giving effect to the provisions of a statute. But as laid down by their Lordships of the Supreme Court in *Harishankar Bagla and Another Vs. The State of Madhya Pradesh*, the essential power of legislation cannot be delegated.

"In other words the Legislature cannot delegate its function of laying down legislative policy in respect of a measure and its formulation as a rule of conduct. The Legislature must declare the policy of the law and the legal principles which are to control any given cases and must provide a standard to guide the officials or the body in power to execute the law. The essential legislative function consists in determination or choice of the legislative policy and of formally enacting that policy into a binding rule of conduct."

To the same effect are the decisions of the Supreme court in *Bhatnagars and Co. Ltd. Vs. The Union of India (UOI)*, and *Mohammad Hussain Gulam Mohammad and Another Vs. The State of Bombay and Another*, .

Sri. N.D. Pant in this connection submitted that the various Removal of Difficulties Orders issued in the instant case have not changed the legislative policy as the Legislature has laid down its policy in Sub-section (c) of Section 577 of the Adhiniyam by providing that all proceedings for acquisition of land whether in pursuance of any scheme Initiated under the Act may be continued as if they had been initiated under the Adhiniyam. I am afraid I am unable to agree to this proposition as the legislative policy was laid down by the Legislature by enacting Section 365 of the Adhiniyam and by imposing a bar of five years for the completion of the scheme at least upto the stage of making of awards and by providing one year's period of grace in the proviso, in my opinion it was done deliberately by the Legislature so that compensation may be determined and proceedings may not hang on for several years. This, being a matter of principle and legislative policy, could not be the subject of Removal of Difficulties Orders.

23. The Removal of Difficulties Orders issued by the State Government in this case have, in effect, wiped out the proviso to Sub-section (4) of Section 365 and Sub-section (c) of Section 577 of the Adhiniyam. The Legislature had made a specific provision under the proviso to Sub-section (4) of Section 360 of the Adhiniyam and had provided that the State Government may in any particular case before the expiry of the period of five years extend the period by one year. In my opinion a radical change in the purpose and policy of the Adhiniyam could not be made by the State Government by a general order issued u/s 580 of the Adhiniyam. As against a general provision a specific provision contained in the Adhiniyam must prevail. The subject matter of Section 580 is entirely foreign to

the proviso of Sub-section (4) of Section 365 of the Adhiniyam. The State Government u/s 580 of the Adhiniyam has been given the power to remove any difficulty giving effect to the provisions of the Adhiniyam or if any difficulty arises by reason of anything contained in the Adhiniyam to any other enactment for the time being in force. It has not been given the power to legislate and wipe out some provisions of the Adhiniyam or to add anything to them. The State Government has been given the power u/s 580 in order to remove a difficulty and has been authorised to make only such alterations in the Adhiniyam which are not of substance but are only formal, in other words the State Government cannot introduce changes of substance in any provision of the Adhiniyam.

By changing the period of limitation contained in the proviso to Sub-section (4) of Section 365 of the Adhiniyam, the State Government has made a change of substance and not of form which, in my opinion, it was not authorised to do. Section 580 of the Adhiniyam "does not confer on the State Government unguided power to prim and prune" the Adhiniyam. The Legislature had given the power to the State Government to extend the period of five years by one year for specific purpose. The State Government u/s 580 of the Adhiniyam could issue Removal of Difficulties Orders "to give had and bloom to provisions" of the Adhiniyam and not to make substantial alterations in its provisions. By issuing the various Removal of Difficulties Orders the State Government had made a radical alteration in the provisions of the Adhiniyam and has "overstepped the periphery" of Section 580 of the Adhiniyam and has altered "the material of which the Act is woven". I am fortified in my view by a decision of a Division Bench of this Court in Tula Ram v. State, writ Petn. No. 2098 of 1963, D/- 17-9-1963 (All).

If any difficulty arises in giving effect to the provisions of the Adhiniyam, or by reason of anything contained in the Adhiniyam to any other enactment for the time being in force the State Government has undoubted power to remove it by virtue of the power conferred on it by Section 580 of the Adhiniyam but only if the difficulty is minor and unimportant, in my view it could never be the intention of the Legislature that the Executive Government would be free to undo any provision of the Adhiniyam in the guise of removing a difficulty. This is a peculiar jurisdiction of the Legislature. If the difficulty is major or substantial Section 580 would not be of any help to the State Government.

24. In view of the above discussion I am, of the view that the various Removal of Difficulties Orders issued by the state Government have overreached Section 580 and have made radical alterations in Sub-section (4) of Section 365 of the Adhiniyam. It follows, therefore, that the statutory period of five years as provided by Sub-section (4) of Section 365 having expired in May 1963 the acquisition proceedings being taken by the Nagar Mahapalika are Illegal and without jurisdiction. 25. Para. 426-A of the Manual of orders of the Government of Uttar Pradesh in the Revenue Department provides that on the date specified in the notice issued u/s 9 of the Land Acquisition Act the Collector shall explain to

the parties the basis on which he has estimated the compensation. The Collector is also required under that para to ask the parties interested whether they desire an adjournment of the proceedings to another date in order to have an opportunity to prove that the figures relied upon by the Collector are not suitable as the basis of valuation in a particular case. The paragraph also requires that if any objection or claims are filed, the Collector shall examine them and record an order in his own hand if he rejects them, giving his reasons for doing so. In paragraph 17 of the petition it is stated that notices u/s 9 of the Land Acquisition Act were issued to the petitioners and they were asked to appear before the Special Land Acquisition Officer on 21st February 1963. The petitioners appeared before the Officer on the date fixed and requested him to Intimate to them the basis of compensation but they were informed that as they were only tenants of the premises there was no provision for any compensation to be paid to them and as such no question of intimating the basis of compensation arose.

The learned counsel for the petitioners, therefore, submitted that since no provision has been made in the scheme for the payment of compensation to the occupiers and tenants of the premises sought to be acquired the scheme is hit by Article 31 of the Constitution and the present proceedings are unconstitutional, illegal and without jurisdiction and that no award can be given unless provision for compensation to be paid to the petitioners is made in it. u/s 9 of the Land Acquisition Act the Collector is required to issue notices to persons Interested stating the intention of the State Government to take possession of the land and requiring the persons interested to file claims to compensation for all interests in such lands before him. Section 11 of the Land Acquisition Act requires the Collector to proceed to enquire into the objections which the persons interested have filed before him in pursuance of the notice u/s 9 and also to enquire into the value of the land and into the respective interests of persons claiming compensation and then to make an award stating (a) the true area of the land, (b) the compensation which in his opinion should be allowed for the land and (c) the apportionment of the said compensation among all the persons known or believed to be interested in the land, of whom, or whose claims, he has information whether or not they have respectively appeared before him. Section 18 of the same Act provides that any person interested who has not accepted the award may, by written application to the Collector, require that the matter be referred by the Collector for the determination of the Court, whether his objection be to the measurement of the land, the amount of compensation, the persons to whom it is payable, or the apportionment of the compensation among the persons Interested. Section 26 provides that every award shall be in writing signed by the Judge and shall be deemed to be a decree and the statement of the grounds of such award a judgment within the meaning of Section 2, Clause (2) and Section 2, Clause (9) respectively of the C.P.C. An appeal can be filed against the decree in this Court. It was, therefore, open to the petitioners to have the question regarding compensation being decided by filing claims before the Land Acquisition Officer and if they were not satisfied to ask for a reference

to the Court u/s 18 of the Land Acquisition Act.

A statement made by the Land Acquisition Officer that no compensation was proposed to be paid to the petitioners would not touch the validity of the scheme and would not entitle the petitioners to file a petition under Article 226 of the Constitution. Moreover the Act under which the scheme was originally Initiated and the Land Acquisition Act under which the land is sought to be acquired are pre-constitution laws and are, therefore, protected from the operation of Article 31(2) of the Constitution by the provisions of Article 31(5)(a). The validity of the scheme or the proceedings under the Land Acquisition Act cannot, therefore, be attacked on the ground that they Infringe the right guaranteed by Article 31 of the Constitution. See Smt. Somavanti and Others Vs. The State of Punjab and Others, .

26. I also find no force in the submission of the learned counsel for the petitioners that in an area of about six acres of land the scheme proposed to construct 41 houses and according to the building regulations of the Nagar Mahapallika no construction can be made on less than half acre of land and, therefore, the building regulations are in violation of Article 14 of the Constitution. In this connection Mr. Gupta also urged that the scheme will amount, reducing the area into a slum and it would be undesirable to bring 41 families of low income group near the women's hostel. No such ground has been taken by the petitioners in the petition. The petitioners, therefore, cannot be permitted to raise a fresh ground at the time of arguments, in these days of acute housing difficulty it is, in my view, in public interest that provision be made for accommodating as many people as possible by building new houses.

27. It was next urged by Sri Brijlal Gupta that the scheme is not for public purpose at all and is a business scheme of Nagar Mahapalika and as such it amounts to a colourable exercise of power by the State Government. In this connection Mr. Gupta relied on a decision of the Supreme Court reported in Smt. Somavanti and Others Vs. The State of Punjab and Others, by which it was held that:

"the courts are not entitled to go behind the declaration of the Government to the effect that a particular purpose for which the land is being acquired is a public purpose. We must emphasise that the declaration of the Govt. must be relatable to a public purpose as distinct from a purely private purpose. If the purpose for which the acquisition is being made is not reliable to public purpose then a question may well arise whether in making the declaration there has been, on the part of the Government a fraud on the power conferred upon it by the Act. In other words the question would then arise whether that declaration was merely a colourable exercise of the power conferred by the Act, and, therefore, the declaration is open to challenge at the Instance of the party aggrieved".

Public purpose, as observed by the Supreme Court is bound to vary with the

times and the prevailing conditions in a locality.

"It is because of this that the legislature has left it to the Government to say what is a public purpose and also to declare the need of a given land for a public purpose..... If the purpose for which the land is being acquired by the State is within the legislative competence of the State the declaration of the Government will be final subject, however, to one exception. That exception is that if there is a colourable exercise of power the declaration, will be open to challenge at the instance of the aggrieved party".

28. The scheme in dispute was framed under the provisions of the Act and notices were issued to the petitioners who were asked to file objections. The petitioners have not taken any ground in the petition regarding the plea of colourable exercise of power by the State Government in framing the scheme. No averment has been made in the petition that there has been any colourable exercise of power by the State Government in framing the scheme. I, therefore, find no force in this submission of the learned counsel for the petitioners.

(28A) Section 1 of the Land Acquisition Act runs thus:

"Whenever any land shall have been so declared to be needed for a public purpose or for a company, the Provincial Government, or some officer authorised by the Provincial Government in this behalf, shall direct the Collector to take order for the acquisition of the land".

(28B) Sri Brijlal Gupta contended that there is no order of the State Government authorising the Special Land Acquisition Officer, Nagar Mahapalika, to take proceedings in respect of the land in dispute. His argument is that the State Government directed the collector of Allahabad to take order for the acquisition of the land required for the implementation of the scheme and no order was issued to the Special Land Acquisition Officer, Nagar Mahapalika by the State Government asking him to take proceedings for the acquisition of the land in dispute. He submitted that besides the Collector there are three Additional Collectors and two more Collectors at Allahabad for the purpose of the Land Acquisition Act and, therefore, the order of the state Government dated 9th May 1963 (Annexure X to the counter-affidavit of the Superintendent, Vikas Vibhag, Nagar Mahapalika, Allahabad) does not show as to which Collector was directed to take acquisition proceedings in respect of the impugned scheme and in the absence of a direction in the name of a particular Collector the land acquisition proceedings are illegal and without jurisdiction.

I find no force in this argument. It is stated in paragraph 3 of the petition that a notice of the scheme was given to the petitioners and that the petitioners sent their objections against the scheme. In paragraph 10 of the petition it is stated that the Land Acquisition Officer, Allahabad called upon the Allahabad University to deposit about rupees four lakhs and odd as the estimated cost of the land." In paragraph 13 of the petition it is stated that on the enquiry the Special Land Acquisition Officer, Nagar Mahapalika informed petitioner No. 1 that

there was no order 011 the file extending the time of the scheme under the proviso to Section 365 (4) of the Adhiniyam. Paragraph 16 of the petition shows that the petitioners filed an application before the Land Acquisition Officer to intimate to them as to whether any housing scheme u/s 346 of the Adhiniyam had been framed by the Nagar Mahapalika or not, Paragraph 17 of the petition says that the Special Land Acquisition Officer issued notices u/s 9 of the Land Acquisition Act to the petitioners to appear before him on 21st February 1963.

These averments in the various paragraphs of the petition clearly show that the petitioners did, in fact, appear before the Special Land Acquisition Officer. These averments further show that the petitioners were never in doubt about the identity of the Collector who was taking proceedings for the acquisition of the land. Besides, the petitioners never challenged the authority of the Special Land Acquisition Officer in taking proceedings for the acquisition of the land in dispute and they cannot, in my opinion, be allowed to raise an objection in that regard at this stage.

29. The last submission of the learned counsel is that the original scheme having been abandoned it could not be restarted without there being a fresh notification in that behalf under the provisions of the Adhiniyam. It has already been mentioned above that it is stated in paragraph 13 of the counter-affidavit that there is an order of the Additional District Magistrate dated 6th May 1959 to the following effect:

"Drop proceedings as the University is acquiring this land. Informed Trust".

30. It is not disputed that no fresh notifications u/s 4 or 6 of the Land Acquisition Act were issued by the State Government but Sri Pant contended that the scheme was never abandoned and that there is no provision in the Act for the abandonment of schemes. According to Sri Pant there was only an interregnum but the scheme was never abandoned. Sri Pant relied on *Ram Dayal v. Kanpur Urban Area Development Board* 1956 All LJ 595. In this ruling it was held:

"There is no express power given under the U. P. Town Improvement Act, 1919 or the Kanpur Urban Area Development Board Act, 1945 either to the Improvement Trust or to the Development Board to abandon any scheme after it has been submitted to the State Government for sanction and has been sanctioned. It may be that the Development Board may for some reasons not carry out a particular scheme but there is no provision giving power to the Board to abandon any scheme".

31. The facts of this ruling are, however, different. In that case due to the war and the shortage of housing accommodation it was not possible for the trust to construct quarters for the residents of the locality involved and, therefore, further operation of the scheme remained in abeyance. In the instant case, however, it is clear from the counter-affidavit that the scheme was completely dropped, i.e. it was tilled. A thing which is dead cannot be revived. No provision has been shown to me by Mr. Pant either in the Act or in the Adhiniyam by which

the scheme could be revived. Had the scheme been put into cold storage, for the time being, it could undoubtedly be revived but in the present case the scheme was completely dropped. In my view, therefore, the scheme could not be revived.

32. For all these reasons I allow this petition with costs and quash the scheme as well as the land acquisition proceedings being taken by the Special Land Acquisition Officer, Nagar Mahapalika in connection with the "Bank Road Housing Scheme". The Land Acquisition Officer is directed not to proceed further with that scheme and not to proceed with the land acquisition proceedings in connection with the scheme.