
(2016) 02 AHC CK 0106
In the Allahabad High Court
Case No : Land Acquisition No. 173 of 2015

Rajendra Sahkari Awas Samit Ltd.

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 09-02-2016

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 38 Rule 10
Land Acquisition Act, 1894 — Section 11, Section 17, Section 17(3-A), Section 4,
Section 7
Registration Act, 1908 — Section 47
Uttar Pradesh Avas Evam Vikas Parishad Adhiniyam

Citation : (2016) 02 AHC CK 0106

Hon'ble Judges : Narayan Shukla and Ashok Pal Singh, JJ.

Bench : Division Bench

Advocate : Santosh Kumar Tripathi, for the Appellant; C.S.C., Anurag Singh and Mahesh Chandra, for the Respondent

Final Decision : Allowed

Judgement

Narayan Shukla, J.—1. Heard Mr. Santosh Kumar Tripathi, learned counsel for the petitioner, Mr. Anurag Singh, learned counsel for the respondent Nos. 4 to 6 as well as Mr. Abhinav Narayan Trivedi, learned Additional Chief Standing Counsel.

2. The matter relates to the land acquisition, which is governed under the Uttar Pradesh Avas Evam Vikas Parishad Adhiniyam, 1965.1

3. The petitioner has assailed the Notifications dated 11.11.1999 issued under Section 28, Notification dated 27.2.2004 issued under Section 32 of the Adhiniyam 1965 as also the decisions of the Planning Committee taken in its meeting dated 2.8.2000 and 3.8.2000 rejecting the petitioner's claim of exemption from acquisition of the land in question.

4. The petitioner has claimed to be a Cooperative Society registered under the provisions of Uttar Pradesh Cooperative Societies Act, 1965. The object to form a Society is to provide plots for housing, dwelling house and/or plots to its

members. The petitioner had purchased the land admeasuring 20 bighas 6 biswa of several khasras comprising Nos. 228, 229, 236, 238, 239, 1545, 1657, 318/3mi., 571, 783, 784, 1477, 318 situated at village Baroli Khalilabad, Pargana Bijnor Tahsil and district Lucknow through sale deeds executed on 14.5.1999, 29.5.1999 and 7.6.1999. These sale deeds were presented for registration before the Sub Registrar (Fifth), Lucknow on 15.5.1999 and 9.6.1999, but they were registered on 12.1.2000, 15.1.2000 and 15.12.1999. Thereafter the petitioner's name was also mutated in the revenue records of the aforesaid land. In the meanwhile Uttar Pradesh Awas Evam Vikas Parishad² issued notice on 11.11.1999 under Section 28 of the Adhiniyam 1965 proposing to acquire the land in question and further a notice dated 27.2.2004, under Section 32 of the Adhiniyam 1965 was issued to acquire the land in question. Aggrieved petitioner submitted objections against the acquisition of the land and claimed its exemptions from acquisition in terms of Government Order dated 9.4.1980 as well as 25.4.1984, in which it was provided that if a Cooperative Housing Society had purchased any land before issuance of notification under Section 4 read with Section 17 of the Land Acquisition Act 1894 as far as possible, the said land shall not be acquired and if had been acquired then it shall be released from acquisition. The provision of Section 4 of the Land Acquisition Act 1894 is pari-materia of provisions of Section 28 of the Adhiniyam 1965.

5. The Planning Committee in its meetings dated 2.8.2000 and 3.8.2000 rejected the petitioner's objection on the ground that the petitioner's Society did not fulfill the conditions mentioned in Government Order dated 20.10.1999. The Government Order dated 20 October 1999 provides that the benefit of adjustment be provided only to those Cooperative Societies which had purchased the land preceding eight months of issuance of Notification under Section 4 and to this extent the Government Order dated 2 June 1998 was modified. The Government Order dated 2 June 1998 permits the exemption of land from acquisition, if it was purchased by the Cooperative Housing Society or sold to its members before issuance of notification under Section 4.

6. The learned counsel for the petitioner has submitted that the respondents have dealt with the petitioner's case as if it was set up by the petitioner for adjustment of land whereas the petitioner had claimed the complete exemption of land from its acquisition on the basis of Government Order dated 2 June 1998. He further contended that Section 47 of the Registration Act, 1908 deals with the time from which registered document operates. It reads as under:-

"47. Time from which registered document operates. A registered document shall operate from the time from which it would have commenced to operate if no registration thereof had been required or made, and not from the time of its registration."

7. He contended that admittedly the sale deeds of the land in question were executed prior to the date of issuance of notification under Section 28 of the Adhiniyam 1965, therefore, in view of the provisions of Section 47 of the

Registration Act 1908 as soon as it was registered the sale have operated from the date of execution of sale deed, therefore, the issuance of notification under Section 28 would be the subsequent date, that being so, it shall have no application over the land in dispute.

8. The learned counsel for the petitioner has further contended that the Government Order dated 20 October 1999, stipulating the period, of preceding, 8 months of issuance of notification under Section 28, for the purpose of exemption of land, shall have prospective effect only, it does not provide its application from retrospective date and prior to 20 October 1999 the Government Order dated 2 June 1998 shall be applicable, which had exempted each and every land of the Cooperative Housing Society purchased by it prior to the date of notification issued under Section 4 from acquisition. He cited a decision of *Manisha Palace vs. State of U.P.* and another, reported in , 2003 (3) AWC 1697, in which the Division Bench of this Court held that a Government Order cannot be made applicable with retrospective effect unless it is issued under the statute which permits retrospective issuance of such government order.

9. The learned counsel for the petitioner further contended that by means of government order dated 2 June 1998 the policy for adjustment of land belonging to Cooperative Societies was also formulated in which it was provided that if any land belonging to Cooperative Housing Societies, which was purchased prior to issuance of notification under Section 4 of 1894 Act is acquired and such Cooperative Housing Society has preferred representation for release/adjustment of land then in that condition 60% of the developed land shall be made available to such Society whose land had been acquired in accordance with the policy. Whereas the petitioner has prayed that it stood on different footing as he always preferred the representations only for releasing his land from acquisition. The petitioner had purchased the land prior to issuance of Government Order dated 20 October 1999. The learned counsel for the petitioner has further contended that the petitioner's objection has been rejected in a very casual manner without application of mind over his demand as well as the relevant Government Orders applicable in the matter. He further contended that after issuance of notification under Section 32 of the Adhiniyam 1965 the urgency clause was invoked in a very casual and routine manner vide notification dated 21 July 2004 issued under Section 17 of 1894 Act alongwith the notification issued under Section 7 of the Act 1894. In lay out plan of Parishad the land in question has been shown as a vacant land though by invoking the urgency clause a symbolic possession was shown to be taken by virtue of Section 17 of 1894 Act and for this purpose no Panchnama was prepared in presence of any independent witness. He cited a decision of the Hon"ble Supreme Court i.e. *Banda Development Authority, Banda versus Moti Lal Agarwal and others*, , (2011) 5 SCC 394, relevant paragraph 37 of which is reproduced hereunder:-

"37. The principles which can be culled out from the above noted judgments are:

(i) No hard-and-fast rule can be laid down as to what act would constitute taking

of possession of the acquired land.

(ii) If the acquired land is vacant, the act of the State authority concerned to go to the spot and prepare a panchnama will ordinarily be treated as sufficient to constitute taking of possession.

(iii) If crop is standing on the acquired land or building/structure exists, mere going on the spot by the authority concerned will, by itself, be not sufficient for taking possession. Ordinarily, in such cases, the authority concerned will have to give notice to the occupier of the building/structure or the person who has cultivated the land and take possession in the presence of independent witnesses and get their signatures on the panchnama of course, refusal of the owner of the land or building/structure may not lead to an inference that the possession of the acquired land has not been taken.

(iv) If the acquisition is of a large tract of land, it may not be possible for the acquiring/designated authority to take physical possession of each and every parcel of the land and it will be sufficient that symbolic possession is taken by preparing appropriate document in the presence of independent witnesses and getting their signatures on such document.

(v) If beneficiary of the acquisition is an agency/instrumentality of the State and 80% of the total compensation is deposited in terms of Section 17(3-A) and substantial portion of the acquired land has been utilised in furtherance of the particular public purpose, then the court may reasonably presume that possession of the acquired land has been taken."

10. In view of the aforesaid principles laid down by the Supreme Court the learned counsel for the petitioner submitted that since the land acquisition authorities had not followed the principles laid down by the Supreme Court the land acquisition proceeding is vitiated by law.

11. The learned counsel for the petitioner further asserted that there is no such provision in the Adhiniyam 1965 to give effect the Government order dated 20 October 1999 with retrospective date. It shall apply only from the date of its enforcement. He further contended that in one case in which even only agreement of sale was executed before issuance of notification under Section 28 of the Adhiniyam 1965 the Parishad considered the application submitted by the Society Ramakrishna Sahkari Awas Smiti Ltd. and in terms of Government Order dated 27 October 1986 it took a decision to adjust the lands on charging the development fee.

12. The petitioner had also preferred a representation dated 27.11.2013 before the Housing Commissioner of Uttar Pradesh Avas Evam Vikas Parishad, Lucknow seeking parity of the aforesaid decision of the State Government made in the case of Ramkrishna Sahkari Awas Smiti Ltd., upon which the Additional Housing Commissioner and Secretary of the U.P. Avas Evam Vikas Parishad opposite party No. 6 called a spot inspection report, but no such report was made available to

him. The respondent No. 6 further submitted a reminder, but in the meanwhile the award under Section 11 of the Act 1894 was made on 23.12.2010, but till date no such compensation has been made to the petitioner.

13. Per contra the respondent No. 4, 5 and 6 without disputing the dates of issuance of notification under Section 28 and 32 of the Adhiniyam 1965 have submitted that the Planning Committee had rejected the petitioner's claim of exemption and recommended that the land in question is useful land for the project considered by the Parishad, hence the same could not be released from the acquisition. The learned counsel appearing for the respondents have submitted that in furtherance of the notification issued for acquisition of land, the Land Acquisition Officer awarded compensation on 17 December 2005 and 23 December 2005. Moreover the physical possession of the land in question was also handed over by the land acquisition officer to the Parishad on 16 June 2005. It has also been submitted that the respondents have raised the question of delay of about 11 years to challenge the acquisition from the date of issuance of notification under Section 32 of the Adhiniyam 1965, which has not been explained. The learned counsel for the respondents have contended that the Full Bench of this Court in Gajraj and others v. State of U.P. and others, reported in , 2011 (11) ADJ 1 (FB) had well discussed the question on delay and held that the writ petition filed with inordinate delay challenging the acquisition cannot be entertained.

14. It has been submitted that the land was acquired in the larger public interest. It has been further submitted that the land now has been fully developed by constructing the roads and green belts, therefore, it cannot be said that it is a vacant land. He further submitted that the plots have also been allotted to the different group housing societies and thus the third party rights have been created over the land.

15. In view of the aforesaid factual backdrop the core question which has arisen for our consideration in the present case is that whether the sale deeds executed in favour of petitioner prior to issuance of notification under Section 28 and presented for registration after the issuance of notification under Section 28 shall be operative from the date of its execution and if it is so then what would be its effect upon the land acquisition proceedings. While discussing the aforesaid question, in profit, we have to go through the provisions of relevant Act and several decisions of this Court as well as Hon''ble Supreme Court.

(1) Uttar Pradesh Avas Evam Vikas Parishad Adhiniyam, 1965. Relevant Section 28 and 32 are reproduced hereunder:-

"28. Notice of housing and improvement scheme.-(1) When any housing or improvement scheme has been framed, the Board shall prepare a notice to that effect specifying-

(a) the boundaries of the area comprised in the scheme;

(b) the dates, hours and place or places at which a map of the area, particulars of the scheme, and details of the land proposed to be acquired and of the land in respect of which betterment fee is proposed to be levied may be seen; and

(c) the date by which objections to the scheme may be made.

(2) The Board shall-

(a) cause the said notice to be published weekly for three consecutive weeks in (i) the Gazette and (ii) two daily newspapers having circulation in the area comprised in the scheme at least one of which shall be a Hindi newspaper; and

(b) send a copy of the notice to the local authority or authorities within whose jurisdiction the area comprised in the scheme lies.

(3) The Housing Commissioner shall cause copy of any document referred to in clause (b) of sub-section (1) to be delivered to any applicant on payment of such fee as may be provided by regulations.

32. Commencement of scheme.- (1) Whenever the Board or the State Government sanctions a housing or improvement scheme, it shall be notified in the Gazette.

(2) The notification under sub-section (1) in respect of any scheme shall be conclusive evidence that the scheme has been duly framed and sanctioned.

(3) Any person who, or a local authority which had filed objections under Section 30, aggrieved by the decision of the Board sanctioning a housing or improvement scheme may, within thirty days from the date of notification under sub-section (1), appeal to the State Government whose decisions thereon shall be final.

(4) If the State Government cancels or alters the scheme as a result of an appeal filed under sub-section (3), the cancellation or alteration shall be notified in the Gazette.

(5) The scheme shall come into force.-

(a) if sanctioned by the State Government, on the date of notification under sub-section (1);

(b) if sanctioned by the Board-

(i) where no appeal is preferred under sub-section (3), on the expiry of thirty days from the date of the notification under sub-section (1); and

(ii) where an appeal is preferred and the scheme is on appeal maintained with or without alternation, on the date of the decision of the appeal, and where more appeals than one are preferred, on the date of the decision of the appeal last decided."

(2) Registration Act 1908. Relevant Section 47 is reproduced hereunder:-

"47. Time from which registered document operates. A registered document shall operate from the time from which it would have commenced to operate if no registration thereof had been required or made, and not from the time of its registration."

(3) Mohammad Bashir Khan and another versus Mt. Kulsum Bibi and others , AIR 1927 Allahabad 545. In this case the property was transferred under a sale deed dated 16th of February 1923, which was presented for registration on the same date, but was actually registered on the 17th of February. The plaintiffs came into Court both on the ground of Mahomedan Law, the custom of pre-emption, and the provisions of the Agra Pre-emption Act of 1922.

In this case the point for consideration, was that the transfer, which was sought to be pre-empted actually came into effect. This court held that "the argument on behalf of the appellants ignored the provisions of Section 47 of the Registration Act under which a registered document operates from the time it would have commenced to operate if no registration thereof had been required or made, and not from the date of its registration. Although the sale deed was incomplete till the formality of registration had been gone through, once that requirement was fulfilled the sale took effect from the date of its execution. In conclusion this Court expressed opinion that the transfer in this case was, in the eye of the law made on the 16th of February 1923 and not on the 17th. S. 2 of the Act therefore makes the new Act inapplicable to this transfer."

(4) Thakur Kishan Singh (dead) versus Arvind Kumar , (1994) 6 SCC 591. In this case a lease deed was executed to the plaintiffs by the lambardar on 5th December 1949, which was registered on 3.4.1950. It was claimed that the deed having been registered on 3.4.1950 was void under Section 6 of the Madhya Pradesh Abolition of Proprietary Rights Act, 1950 as the land had vested in the State on 31.3.1950. The Trial Court did not find any merit in the claim of the appellant and held that even though the lease deed was registered after 30.3.1950, but it having been executed on 5.12.1949, it would be deemed to have been registered on 5.12.1949 and, therefore, the provisions of Section 6 of the Act did not stand in the way of the respondent acquiring the title in land in dispute. But the suit was dismissed on the finding that the appellant had acquired rights by adverse possession. In the appeal the order was set aside and the suit was decreed. The High Court did not interfere in second appeal. The findings recorded by the High Court and the trial Court were assailed by the appellant and it was claimed that the lease deed having been registered after the material date, it could not confer any title on the respondent as the right title-in-interest of the respondent's predecessor already stood vested in the State prior to registration of the lease deed. The Hon"ble Supreme Court held that the argument does not appear to be sound. Section 47 of the Registration Act provides that a registered document shall operate from the time it would have commenced to operate if no registration thereof had been required or made and not from the time of its registration. It is well established that a document so

long it is not registered is not valid yet once it is registered it takes effect from the date of its execution. Since admittedly, the lease deed was executed on 5.12.1949, the plaintiff after registration of it on 3.4.1950 became owner by operation of law on the date when the deed was executed. Therefore, the land did not vest in the State. And the courts below did not commit any error in negating the claim of the appellant.

(5) In *Gurbax Singh versus Kartar Singh and others*, , AIR 2002 SC 959, the respondent No. 2 executed two documents of sale on November 25, 1991. The Hon"ble Supreme Court held that in view of the provisions of Section 47 of the Registration Act, 1908 it is well settled that a document on subsequent registration will take effect from the time when it was executed and not from the time of its registration. Where two documents are executed on the same day, the time of their execution would determine the priority irrespective of the time of their registration. The one which is executed earlier in time will prevail over the other executed subsequently.

(6) *Hamda Ammal versus Avadiappa Pathar and 3 others* , (1991) 1 SCC 715. In this case the Hon"ble Supreme Court held that the legislature being alive to such situations has already provided in Section 47 of the Registration Act that it shall operate from the time from which it would commence to operate if no registration thereof had been required or made and not from the time of its registration. Thus in our view the vendee gets rights which will be related back on registration from the date of the execution of the sale deed and such rights are protected under Order XXXVIII Rule 10 CPC read together with Section 47 of the Registration Act.

16. The Constitution Bench of the Supreme Court in *Ram Saran Lall and others versus Mst. Domini Kuer and others*, Respondents; *The State of Punjab*, Intervener, , AIR 1961 SC 1747, has held that Section 47 of the Registration Act permits a document when registered, to operate from a certain date which may be earlier than the date when it was registered. The object of this section is to decide which of two or more registered instruments in respect of the same property is to have effect. The section applies to a document only after it has been registered. It has nothing to do with the completion of the registration and therefore nothing to do with the completion of a sale when the instrument is one of sale. A sale which is admittedly not completed until the registration of the instrument of sale is completed, cannot be said to have been completed earlier because by virtue of Section 47 the instrument by which it is effected, after it has been registered, commences to operate from an earlier date.

17. The petitioner has assailed the Notifications issued under Section 28 and 32 of the Adhiniyam 1965 as also the decision of the Planning Committee dated 2.8.2000 and 3.8.2000, in view of which the respondents have raised the question of delay to challenge the orders of acquisition of land as well as the decision of Committee. It is admitted fact of the respondents that the 3rd party rights have been created over the land by way of allotment of plots to the

different Group Housing Societies. Therefore, we are of the view that the writ petition cannot be thrown out on the ground of delay as has been held by the Hon''ble Supreme Court in M/s. Royal Orchid Hotels Ltd. and another versus G. Jayarama Reddy and others, , 2011 (9) ADJ 505 (SC). In this case the Hon''ble Supreme Court held that when it was subsequently discovered that the acquired land has been transferred to private persons and then petitioners sought intervention of the Court, the Division Bench has rightly entertained the writ petition ignoring the delay.

18. In view of the aforesaid law laid down by the Hon''ble Supreme Court, we over rule the objection of delay raised by the respondents and proceed to decide the case on merit.

19. Some dates are significant to decide the question, which are mentioned as under:-

(i) The Notification under Section 28 was issued on 11.11.1999. By means of the Notification issued under Section 28, the Parishad notified its intention to acquire the land specified therein by inviting objections.

(ii) Notification under Section 32 of the Adhiniyam 1965 was issued on 27.2.2004 for acquisition of land.

(iii) Sale deeds of the land in question were executed on 14.5.1999, 29.5.1999 and 7.6.1999. These sale deeds were presented for registration before the Sub Registrar, Lucknow on 15.5.1999 and 19.6.1999, but were registered on 15.12.1999, 12.1.2000 and 15.1.2000.

20. The aforesaid dates exposit that the sale deeds in question have been executed prior to issuance of notification under Section 28 of the Adhiniyam 1965 and were registered subsequently, but before issuance of Notification under Section 32 of the Act.

21. In view of the law laid down by the Constitution Bench of the Hon''ble Supreme Court in the case of Ram Saran Lall (Supra) the sale completed on the date of its registration i.e. subsequent to the date of issuance of Notification under Section 28, but as per provision of Section 47 of the Registration Act these sale deeds shall operate from the date of its executions. Admittedly the sale deeds were executed prior to the date of issuance of Notification under Section 28 of the Act. In the meantime since the acquisition proceedings have intervened by issuance of Notification under Section 28 of the Adhiniyam 1965, the question for consideration is whether the sale deeds executed prior to it, but completed later on shall operate over the Notification of acquisition which was issued in between. Section 47 has clearly provided that a registered document shall operate from the time from which it would have been commenced to operate, if no registration thereof has been required to be made and not from the time of its registration.

22. The Constitution Bench of the Hon''ble Supreme Court in the case of Ram

Saran Lall (Supra) considered the object of Section 47 of the Registration Act and held that the object of this section is to decide which of two or more registered instruments in respect of the same property is to have effect. The section applies to a document only after it has been registered. It has nothing to do with the completion of the registration and therefore nothing to do with the completion of a sale when the instrument is one of sale.

23. In Hamda Ammal (Supra) the Hon"ble Supreme Court also discussed the scope of Section 47 of the Registration Act and held that vendee gets rights which will be related back on registration from the date of the execution of the sale deed and such rights are protected under Order XXXVIII Rule 10 CPC read together with Section 47 of the Registration Act.

24. In the case of Thakur Kishan Singh (Supra) the Hon"ble Supreme Court held that "it is well established that a document so long it is not registered is not valid yet once it is registered it takes effect from the date of its execution. Since admittedly, the lease deed was executed on 5.12.1949, the plaintiff after registration of it on 3.4.1950 became owner by operation of law on the date when the deed was executed. Therefore, the land did not vest in the State."

25. In the case of Gurbax Singh (Supra) the Hon"ble Supreme Court held that in view of the provisions of Section 47 of the Registration Act, 1908 it is well settled that a document on subsequent registration will take effect from the time when it was executed and not from the time of its registration.

26. In the case of Mohammad Bashir Khan (Supra) this Court held that although the sale deed was incomplete till the formality of registration had been gone through, once that requirement was fulfilled the sale took effect from the date of its execution.

27. In all the judgments cited above on the scope of Section 47 of the Registration Act the Hon"ble Supreme Court has held that a document so long it is not registered is not valid yet once it is registered it takes effect from the date of its execution.

28. In view of the law propounded above by the Hon"ble Supreme Court, we are of the view that after registration the sale deeds had come into operation from the date of their executions i.e. 14.5.1999, 29.5.1999 and 7.6.1999, which are the dates prior to the date of issuance of Notification under Section 28 of the Adhiniyam 1965, which was notified on 11.11.1999.

29. The next consideration would be the effect of the Government Orders dated 9 April, 1980, 25 April, 1984, 2 June 1998 as well as 20 October, 1999. The Government Order dated 9 April 1980 provided that since the object of Cooperative Housing Society is also to develop the land in planned manner and they shall also provide the houses to the members of lower income group and middle income group, keeping in view the fact that they had purchased the land prior to commencement of land acquisition proceedings, they shall be permitted

to develop their land and construct the houses for its members. Thus this Government Order provided exemption of the land of the Cooperative Housing Societies, Municipalities and Development Authorities from its acquisition.

30. The Government Order dated 25 April 1984 in reference to earlier Government Order dated 9 April 1980 further took a decision to exempt the land of the Cooperative Housing Societies, which had been purchased by them and had been provided it to its members.

31. By means of Government Order dated 2 June 1998 the State Government in reference to earlier two Government Orders dated 9 April, 1980 and 25 April, 1984 further took a decision that even though the land of the Cooperative Housing Society is to be exempted from acquisition yet if it has been acquired then their lands shall be adjusted in the Schemes of Development Authorities/ U.P. Avas Evam Vikas Parishad. It was further provided that this facility shall be available to only those lands which have been purchased by the Cooperative Housing Societies prior to issuance of notification under Section 4 of the Land Acquisition Act.

32. The Government Order dated 20 October 1999 in reference to Government Order dated 2 June 1998 provided that the facility of adjustment shall be provided to only those Cooperative Housing Societies which had purchased the land by registered sale deed preceding 18 months of issuance of Notification under Section 4 of the Land Acquisition Act.

33. In the case on hand the sale deeds were registered on 15.12.1999, 12.1.2000 and 15.1.2000, but since after their registration they came into force from the date of their executions viz. 14.5.1999, 29.5.1999 and 7.6.1999, the learned counsel for the petitioner has submitted that, the Government Order dated 20 October 1999 shall have no application in the petitioner's case. It has further been submitted that the Government Order dated 20 October 1999 does not provide its enforcement with the retrospective date and unless it provides so, it shall not be given effect to from the retrospective date as has been held by this Court in the case of Manisha Palace (Supra)

34. On the date of execution of sale deeds three Government orders dated 9 April, 1980 and 25 April 1984 and 2 June 1998 were in existence. The Government Order dated 9 April, 1980 as well as Government Order dated 25 April, 1984 clearly mandate to keep away the Cooperative Housing Society's land from acquisition. In so far as the Government Order dated 2 June, 1998 is concerned, it discusses the situation when despite the Government Orders dated 9.4.1980 and 25.4.1984 the land of the Cooperative Housing Society had been included in the Scheme of Development Authorities or Parishad and provides for their adjustment in the Scheme of Development Authorities and Parishad. In the present case the Notifications under Section 28 of the Adhiniyam 1965 was issued on 11.11.1999, whereas the sale deeds executed in favour of the petitioner had come into force prior to it, therefore, we are of the view that this

Government Order shall have no application in the present case.

35. In view of the aforesaid fact obviously the petitioner's case was covered under the Government Orders dated 9.4.1980 and 25.4.1984, which provided the exemption of Cooperative Housing Society's land from acquisition.

36. Regard being had to the aforesaid submissions when we examine the impugned recommendations of the Planning Committee, we found that the Planning Committee could not apply its mind with regard to the acquisition of land of the petitioner. The recommendations of the Planning Committee itself reveal that it considered the petitioner's objection and inspected spot, but found that the petitioner's Society did not fulfill the conditions laid down in the Government Order dated 20.10.1999 and the land is useful for the Scheme of Parishad, therefore, it recommended to reject the petitioner's objection and recommended to include the petitioner's land in the Scheme of Parishad. That apart, the Planning Committee had not considered anything more nor did it disclose its mind as to which condition of Government Order dated 20.10.1999 could not be fulfilled by the petitioner.

37. We have considered the effect of Government Order dated 20.10.1999 and have arrived at conclusion that it does not apply in the petitioner's matter.

38. Regard being had to the aforesaid submissions, we are of the considered opinion that the petitioner's matter is fully covered under the Government Orders dated 9 April 1980 and 25 April 1984. Accordingly, we hold that the petitioner's lands deserve to be exempted from the acquisition made by Parishad. Therefore, we hereby quash the Notifications dated 11.11.1999 issued under Section 28 and Notification dated 27.2.2004 issued under Section 32 of the Adhiniyam 1965 as well as the decisions of the Planning Committee taken in its meeting dated 2.8.2000 and 3.8.2000.

39. The writ petition stands allowed.

1Adhiniyam 1965

2Parishad