

**(1977) 08 AHC CK 0026**  
**In the Allahabad High Court**  
**Case No : Writ Petition No. 380 of 1973**

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| Smt. Malti Singh         | Vs | APPELLANT  |
| State of U.P. and Others |    | RESPONDENT |

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**Date of Decision :** 18-08-1977

**Acts Referred:**

Constitution of India, 1950 — Article 13(2), 19(1), 31A, 31C  
Land Acquisition Act, 1894 — Section 17(1A)  
Uttar Pradesh Land Acquisition (Amendment) Act, 1966 — Section 55

**Citation :** AIR 1978 All 273

**Hon'ble Judges :** T.S. Misra, J; Hari Swarup, J

**Bench :** Division Bench

**Advocate :** Lalloo Singh, for the Appellant; S.D. Misra, for the Respondent

**Final Decision :** Dismissed

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## Judgement

T.S. Misra, J.—The petitioner is owner of plots Nos. 491, 494, 498, 499 and 497, having an area of 3 Bighas which according to her were used by her for the purposes of business as also for worship. She has constructed a Pucca residential house, cattle shed, oil mill, flour mill, temple and a Samadhi of her father-in-law, on the said land and runs there a Dairy and Poultry farm. The opposite party No. 3 got the said land acquired for developing a Housing Scheme. When the petitioner came to know of the acquisition, she made a representation dated 16th January, 1970 and also met the Commissioner of Housing Board, Uttar Pradesh who, it is alleged, informed her that her land would not be acquired and that she would not be disturbed. However, on 12th January, 1973 a few employees of the Housing Board reached the land and started making measurements and counting the trees and plants standing thereon to which the petitioner objected. Aggrieved by that action of the opposite parties the petitioner sent a reminder to the Commissioner of the Housing Board on 31st Feb., 1973 but to no avail. She was served with the impugned notice and was told to represent her case before the Special Land Acquisition Officer of the Housing Board. These notices are Annexures 3 and 3-A, Her contention is that

the land and property in question were neither waste land nor arable land and that she was never informed of the principle on the basis of which the compensation of land and the material embedded on it would be paid. The plan of the scheme was neither shown to her nor sent to her in any manner. She has alleged that there are other private buildings, business premises and worship places in the locality which have been excluded from the scheme and had not been acquired by the opposite parties, whereas her property was being acquired. She has thus been discriminated against without any reasonable basis. She submitted a memorandum of objection in this regard before the Special Land Acquisition Officer of the Housing Board, but neither the representations nor objections have been disposed of. The opposite parties, however, have decided to acquire the land of the petitioner arbitrarily. She has further alleged that Sections 17(1) and 17(1-A) of the Land Acquisition Act as incorporated in the schedule to Avas Evam Vikas Parishad Adhiniyam u/s 55 of the said Act; are ultra vires and violative of the provisions of Articles 13(2), 31, 31-A, 31-B, 31-C and 19 of the Constitution. She has also alleged that the impugned notice is violative of the provisions of Article 14 of the Constitution and as her land was not being acquired for the public purpose, the acquisition is not saved by Article 31-C of the Constitution. She has, therefore, prayed for a writ in the nature of certiorari quashing the scheme so far as it relates to her land and also quashing the impugned notice. She has also prayed for a writ in the nature of prohibition restraining the opposite parties from acquiring her land.

2. The petition was contested by the opposite parties. The counter-affidavit filed on behalf of the opposite party No. 3, namely, the Commissioner, Housing Board, dated 24th May, 1973 discloses that the disputed land was being acquired for Bastauli Ghazipur Bhumi Vikas Evam Grihasthan Yojna. Lucknow. A notification u/s 28 of the Uttar Pra-desh Avas Evam Vikash Parishad Adhiniyam, hereinafter called the Act, was published in the U. P. Gazette, dated 20-12-1969, 27-12-1969 and 3-1-1970 and also in the Pioneer (English Daily) and Navjeeewan (Hindi Daily) of the same dates. A notice u/s 29 of the Act was issued to the petitioner on 19-1-1970 and was served on Laxmi Narain, a servant of the petitioner's husband. The scheme was sanctioned by the State Government on 17th June, 1970 and a notification u/s 32 of the Act was published in the U. P. Gazette, dated 8th July, 1972. Sanction of the State Government u/s 17 of the Land Acquisition Act was given on 12th Oct., 1972 and a notification dated 12th Oct., 1972 u/s 17 of the Land Acquisition Act. as amended by the U. P. Avas Evam Vikas Parishad Adhiniyam was published in the U. P. Gazette, dated 28th Oct., 197-2. The petitioner, however, did not file any appeal to the State Government within 30 days, as required by Section 32(3) of the Act, In para 11 of the counter-affidavit it is stated that out of the land of the petitioner having an area of 2 bighas 17 biswas 15 biswansis, possession over 2 bighas 8 biswas has already been taken. However, possession of Kothris and tube well has not been taken and these constructions are said to be unauthorised having been made after the publication of the notification u/s 28 of the Act. It Is further alleged that

the petitioner knew about the notification and had filed her objections on 16th Jan., 1970 which were heard by the Planning and Development Committee of the Parishad in the presence of Sri P. N. Singh, husband of the petitioner, on 18-2-1971. The objections were rejected and the decision was approved by the Parishad on 22nd May, 1971. The allegation of the petitioner that the then Commissioner of the Housing Board had given any assurance to her that her land would not be acquired has been denied. The other averments made by her have also been repudiated. In her rejoinder affidavit the petitioner has reiterated her allegations made in the petition and has denied the averments made on behalf of the opposite party No. 3 in the counter-affidavit.

3. For the petitioner it was urged that inasmuch as residential buildings and places of worship owned by certain persons in the locality have been excluded from the operation of the Scheme the petitioner had been discriminated against by the Housing Board while it seeks to acquire her land and the property standing thereon. Hence it was urged that acquisition of her property is in breach of the provisions of Article 14 of the Constitution. We find no merits in this contention.

4. The property of the petitioner sought to be acquired is the land having a total area of 2 bigha 17 biswas and 17 biswansis. In the counter-affidavit filed on behalf of opposite party No. 3 it is stated that certain constructions standing on that land were unauthorised as they were made after the publication of the notification u/s 28 of the Act. The opposite party No. 3 has already taken possession of the major portion of the land measuring 2 bighas and 8 biswas out of the total area of 2 bighas, 17 biswas 15 biswansis. This is indicative of the fact that major portion of the petitioner's land did not have any constructions thereon. According to the petitioner private buildings, business premises and worship places of certain persons have been excluded from the operation of the Scheme, for example, the temple premises of Baba Bhootnath. the premises of Mahanagar Cold Storage, Gapal Cold Storage and the dwelling houses situated between the temple of Baba Bhootnath and village Ghazipur have not been acquired. These properties are in the shape of buildings. Two of them are used for industrial purposes whereas the other is used as a place of worship. Some of them are alleged to be used as dwelling houses. The property of the petitioner was not a building, but was land having an area of 2 bighas 17 biswas 15 biswansis, out of which the possession of an area of 2 bighas 8 biswas has already been taken by the opposite parties. The character of the property of the petitioner is obviously different from the character of the properties of other persons referred to by the petitioner which have not so far been acquired. Whether certain constructions existing on the land of the petitioner were made by her before or after the issuance of the notification for acquisition is a disputed question of fact which cannot be gone into in this writ petition. The fact however remains that a substantial portion of the land of the petitioner has already been taken possession of and over which no building stood. The case of the petitioner thus stands on a different footing, in the circumstances the impugned notices

cannot be said to be violative of Article 14 of the Constitution.

5. The other contention of the petitioner that the impugned acquisition is violative of Article 19(1)(f) of the Constitution is equally without substance. It is by now well settled that, a law for compulsory acquisition of property made under Article 31(2) cannot be challenged under Article 19(1)(f) read with Article 19(5) of the Constitution. (See *State of Gujarat Vs. Shantilal Mangaldas and Others*, and AIR 1968 SC 870 (*Ishwarlal Girdharlal v. State of Gujarat*)).

6. It was next urged that the impugned acquisition is violative of the principles contained in Article 31-A of the Constitution in as much as the petitioner's property is being acquired without adopting the procedure laid down in sections 17 and 19 of the Land Acquisition Act. Further it was urged that Sub-sections 17(1) and 17-A of the Land Acquisition Act incorporated in the schedule to the Act u/s 55 of the Act are ultra vires as they are in contravention of Sections 17(1) and 17(1-A) of the principal Land Acquisition Act and are derogatory of the provisions of Articles 13(2), 31, 31-A, 31-B, 31-C and 19(1)(g) of the Constitution.

7. To appreciate the above argument it would be useful to refer to the relevant provisions of the Uttar Pradesh Avas Evam Vikas Parishad Adhiniyam 1968 (hereinafter called the Act). Section 3 of the Act provides for creation and incorporation of a Board to be called Uttar Pradesh Avas Evam Vikas Parishad. Chapter III of the Act deals with the functions and powers of the Board. Section 15 of the Act provides for the functions of the Board. It stipulates that subject to the provisions of the Act and the rules and regulations, the functions of the Board shall be, inter alia, to frame and execute housing and improvement schemes and other projects, to regulate building operations, to acquire movable and immovable properties for any of the purposes mentioned therein and to do all such other acts and things as may be necessary for the discharge of those functions. Section 16 of the Act provides that the Board may frame a housing or improvement scheme. Section 17 provides that notwithstanding anything contained in any other law for the time being in force, and without prejudice to other [provisions of Chapter III a housing or improvement scheme may provide for. inter alia, the acquisition by purchase, exchange or otherwise of any property necessary for or affected by the execution of the scheme. Section 18 mentions types of housing and improvement schemes. It says that a housing or improvement scheme shall be of one of the types or combination of two or more such types or special features thereof. Grihsthan Yojna (house accommodation scheme) and Bhumi Vikas Yojna (land development scheme) are the two types of schemes out of many. Section 19 of the Act provides that whenever the Board is of opinion that it is expedient or necessary to meet the need for house accommodation in any area, the Board may frame a house accommodation scheme. Such scheme shall specify the layout of the area where the houses are to be constructed and may provide for the building of houses by the Board and by others. The Board may lease out or sell any house so built by the Board. The

board may also provide in the area roads, streets, drainage, water supply, street lighting, community buildings and other amenities. u/s 25 the Board may frame a Bhumi Vikas Yojna i. e., land development scheme which shall specify the proposed lay-out of the area to be developed and the purposes for which particular portions thereof are to be utilised. Section 28 requires that when any housing or improvement scheme is framed the Board shall prepare a notice to that effect specifying the particulars mentioned in the section and cause the said notice to be published weekly for three consecutive weeks in the Gazette and two daily newspapers having circulation in the area comprised in the scheme, and send a copy of the notice to the local authority or authorities within whose jurisdiction the area comprised in the scheme lies. Section 29 stipulates that within six weeks from the date on which a notice is first published u/s 28 in respect of any housing or improvement scheme, the Board shall serve a notice in such form, on such persons or classes of persons and in such manner as may be prescribed, stating that the Board proposes to acquire any specified land or building for the execution of the scheme, or purposes to levy betterment fee. Objections may be filed u/s 30 of the Act against the scheme within the prescribed time. Section 31 provides that after considering the objections, if any, the Board may either abandon the scheme or modify the same. It also provides that the State Government may sanction or return for reconsideration any scheme submitted to it. Section 32 stipulates that wherever the Board or the State Government sanctions a housing or improvement scheme it shall be notified in the Gazette and such notification shall be conclusive evidence that the scheme has been duly framed and sanctioned. Any person who had filed objections u/s 30 aggrieved by the decision of the Board sanctioning a housing or improvement scheme may within thirty days of the notification appeal to the State Government whose decision shall, be final. The scheme may be altered or cancelled u/s 33 of the Act, Section 34 of the Act requires that after a housing or improvement scheme has come into force the Board shall forthwith proceed to execute it Section 55 of the Act deals with the power to acquire land. It reads:--

"55 (1) Any land or any interest therein required by the Board for any of the purposes, of this Act, may be acquired under the provisions of the Land Acquisition Act, 1894. (Act No. 1 of 1804) as amended in its application to Uttar Pradesh, which for this purpose shall be subject to the modification specified in the Schedule to this Act.

(2) If any land in respect of which betterment fee has been levied under this Act is subsequently required for any of the purposes of this Act, such levy shall not be deemed to prevent the acquisition of land under the Land Acquisition Act, 1894 (Act No. 1 of 1894, The Schedule to the Act stipulates the modification in the Land Acquisition Act as amended in its application to Uttar Pradesh. Paras 2, 3 and 4 which are relevant for the purpose of this case read as under:--

Para 2 "(1) The first publication, in the Official Gazette of a notice of any housing or improvement scheme u/s 28 or under Clause (a) of Sub-section (3) of Section

31 of the Act shall be substituted for and have, in relation to any land proposed to be acquired under the scheme, the same effect as publication in the Official Gazette, and in the locality, of a notification under Sub-section (1) of Section 4 of the said Act, except where a notification u/s 4 or a declaration u/s 6 of the said Act has previously been made and is still in force, and the provisions of Section 5-A of the said Act shall be inapplicable in case of such land.

(2) The issue of a notice under Clause (i) of Sub-section (3) of Section 23 of the Act in the case of land acquired under a Bhavi Sark Yojna and the publication of a notification under Sub-section (1), or, as the case may be, under Sub-section (4) of Section 32 of this Act in the case of land acquired under any other housing or improvement scheme under this Act shall be substituted for and have the same effect as a declaration by the State Government u/s 6 of the said Act, unless a declaration under the last mentioned section has previously been made and is still in force.

(3) in a case to which sub-para (1) or sub-para (2) applies, a notification under Sub-section (2) of Section 33 or under Sub-section (3) of Section 49 of this Act involving alteration of the extent of the land proposed to be acquired shall have the effect of correspondingly modifying the notification under Sub-section (1) of Section 4 and the declaration u/s 6 of the said Act so however, that any such modification shall be without prejudice to the validity of anything previously done under the original notification or declaration."

Para 3. "In Section 17 of the said Act-

(i) for the existing Sub-sections (1) and (1-A) the following sub-section shall be deemed to be substituted, namely :--

(1) Whenever the State Government so directs in the interest of the expeditious execution of a housing or improvement scheme under the Uttar Pradesh Avas Evam Vikas Parishad Adhiniyam, 1965 the Collector, though no such award has been made, may on the expiration of fifteen days from the publication of the notice mentioned in Sub-section (1) of Section 9 take possession of any land needed for the purposes of the said Adhiniyam. Such Land shall thereupon vest absolutely in the Government free from all encumbrances;

(ii) Sub-section (4) shall be deemed to be omitted."

Para 4. "After Section 17 of the said Act, the following shall be deemed to be added as a new section, namely:--

17-A Transfer of land to Board-- In every case referred to in Section 16 or Section 17, the Collector shall upon payment of the cost of acquisition make over charge of the land to the Housing Commissioner or an officer authorized in this behalf under the Uttar Pradesh Avas Evam Vikas Parishad Adhmiyam. 1965, and the land shall thereupon vest in the Board subject to the liability of the Board to pay any further costs which may be incurred on account of its acquisition."

8. Thus the publication of a notice of any housing or improvement scheme u/s 28 of the Act or Clause (a) of Sub-section (3) of Section 31 of the Act is the substitute for a notification u/s 4(1) of the Land Acquisition Act. Similarly the publication of a notification under Sub-section (1) or as the case may be under Sub-section (4) of Section 32 of the Act is substituted for a declaration u/s 6 of the Land Acquisition Act. u/s 55 of the Act any land or any interest therein required by the Board for any of the purposes of the Act, may be acquired under the provisions of the Land Acquisition Act as amended in its application to Uttar Pradesh, which for the purposes of the Act shall be subject to the modifications specified in the Schedule to the Act. Thus, referentially the provisions of Land Acquisition Act as amended in its application to Uttar Pradesh and as appropriate in the nature of things have been adopted and incorporated for the purposes of acquisition of land required by the Board for any of the purposes of the Act.

9. The contention that the provisions of Section 17(1) of the Land Acquisition Act as substituted for Section 17 Sub-sees. (1) and (1-A) of the principal Land Acquisition Act and also the provisions of Section 17-A as -added by Uttar Pradesh Avas Evam Vikas Parishad Adhiniyam, 1965 are ultra vires as they contravene both in form and substance Section 17(1) and Section 17(1-A) of the principal Land Acquisition Act has no merits. It was not disputed that the provisions of the Land Acquisition Act could be amended by the State Legislature with regard to their applicability to Uttar Pradesh. The Legislature has accordingly made certain amendments and modifications in the Land Acquisition Act. For the existing Sub-sections (1) and (1-A) of Section 17 of the principal Act another Sub-section (1) has been substituted, the contents of which have already been reproduced above. Similarly after Section 17 of the principal Land Acquisition Act a new Section 17-A has been added. These new provisions have been provided to meet the object of the Act and are appropriate in the nature of, things. u/s 17(1) of the principal) Land Acquisition Act the Collector in cases of urgency shall take possession of any waste or arable land needed for public purposes, though no award has been made under the Land Acquisition Act. Section 17(1-A) inserted as a new sub-section by the Land Acquisition (U. P. Amendment) Act, 1954 provides that the power to take possession under Sub-section (1) may also be exercised in the case of other than waste or arable land, where the land is acquired for or in connection with sanitary improvements of any kind or planned development. The Collector may, thus exercise his power to take possession of waste or arable land or any other land acquired for or in connection with sanitary improvements of any kind or planned development. These two provisions have been amended by substituting a new Sub-section (1) in Section 17 by U. P. Avas Evam Vikas Parishad Adhiniyam, 1965 keeping in view the object of this Act. In substance it says that wherever the State Government so directs in the interest of the expeditious execution of a housing or improvement scheme under the Uttar Pradesh Avas Evam Vikas Parishad Adhiniyam, 1965 the Collector, though no such award has been made, may on the expiration of fifteen days from the publication of the notice u/s 9 take

possession of the land needed for the purposes of the said Adhiniyam. Such land shall thereupon vest absolutely in the Government free from all encumbrances. This provision, in our view, is in consonance with the object of the Act. Similarly, the new Section 17-A deals with the transfer of land to the Board by the Collector. Section 55 of the Act provides that any land or any interest therein required by the Board for any of the purposes of the Act may be acquired under the provisions of the Land Acquisition Act as amended in its application to Uttar Pradesh, which for this purpose shall be subject to the modifications specified in the Schedule to the Act. Entry 42 in the concurrent list of Schedule VII of the Constitution deals with acquisition and requisition of property. State legislature is, therefore, competent to make law on the subject. It is not prohibited from adopting a law and incorporating it in its legislation. It is well established legislative practice to incorporate by reference, if the Legislature so chooses, the provisions of some other Act in so far as they are relevant for the purposes of and in furtherance of the scheme and object of the Act. Considering Section 55 and the Schedule to the Act in the light of this principle we are of the view that the provisions thereof are not invalid. They are also not violative of Articles 13(2), 31-A and 19(1)(g) of the Constitution as alleged. The Act has received the assent of the President and is protected under Article 31-C of the Constitution.

10. It was next urged that the land of the petitioner was not being acquired for public purposes. This contention also has no force. The scheme was sanctioned by the State Government on 17-6-1970. A Gazette notification u/s 32 of the Act was published on 8-7-1972 and it is conclusive evidence that the land is needed for a public purpose and that the scheme has been duly passed and sanctioned. The declaration as to public purpose is final except where it is a colourable exercise of power. In the instant case there is nothing to substantiate that the acquisition was collusive or mala fide. It cannot, therefore be said that the land of the petitioner was not being acquired for any public purpose. In fact it is required by the Board for carrying out those schemes which is a public purpose.

11. Lastly it was urged that no notice u/s 29 of the Act was served on the petitioner. This has been controverted by the opposite party No. 3 in the counter-affidavit dated 17-4-1973. The Notification u/s 28 of the Act was published in the U. P. Gazette dated 20-12-09, 27-12-1969 and 3-4-4870 and also in the Pioneer and "Nav Jeevan" of the same dates. The petitioner filed an objection dated 16-1-1970 and it is stated that the objections were rejected and the Board approved of its decision on 22-5-1971. Notice u/s 29 of the Act was issued to the petitioner on 19-1-1970 and was served on one Lachhmi Narain, who is said to be a servant of the petitioner's husband. The scheme was ultimately sanctioned by the State Government on 17-6-1972 and its notification was published on 28-10-1972. The petitioner did not file any appeal to the State Government within thirty days as required by Section 32 Clause (3) of the Act.

12. Avas Evam Vikas Parishad (Form and Manner of Service of Notice) Rules, 1967 provide that the notice shall be served by giving or tendering the notice to

the person to whom it is addressed or by leaving the notice at his last known place of abode, or by giving or tendering it to some adult member or servant of his family. The notice in the instant case was served on one Lachhmi Narain said to be the servant of the petitioner's husband. The petitioner has denied that Lachhmi Narain was her husband's servant. It is a disputed question of fact which cannot be gone into in a writ petition. It appears that the notice was sought to be served in the manner laid down in the Rules. The principles of natural justice have thus not been violated.

13. No other point was urged. There is no merit in this petition. It is accordingly dismissed with costs.