

(2002) 01 SC CK 0143

In the Supreme Court Of India

Case No : Civil Appeal No's. 1806 and 1807 of 1986 with 1380 of 1991

U.P. Avas Evam Vikas Parishad

APPELLANT

Vs

Rama Krishna and Others

RESPONDENT

Date of Decision : 23-01-2002

Acts Referred:

Citation : (2002) 10 SCC 480

Hon'ble Judges : V. N. Khare, J; Ashok Bhan, J

Bench : Division Bench

Final Decision : Disposed Of

Judgement

1. The U.P. Legislature passed an Act known as the U.P. Avas Evam Vikas Parishad Adhiniyam, 1965, hereinafter referred to as "the Adhiniyam". The object of the Adhiniyam is for establishment, incorporation and functioning of a Housing and Development Board in the State of U.P. On 4-6-1973, the U.P. Urban Planning and Development Act, 1973 (hereinafter referred to as "the Act") came into force. Section 3 of the Act provides that if in the opinion of the State Government any area within the State requires to be developed according to plan it may, by notification in the gazette, declare the area to be a developed area. In pursuance thereof, the State Government on 20-8-1974, by a notification declared the limits of the Municipal Corporation of Kanpur as developed area. Section 59 of the Act further provides that provisions (except in relation to those housing or improvement schemes which have either been notified under Section 32 of the Uttar Pradesh Avas Evam Vikas Parishad Adhiniyam, 1965 before the declaration of the area comprised therein as development area or which having been notified under Section 28 of the said Adhiniyam before the said declarations are thereafter approved by the State Government for continuance under the said Adhiniyam or which are initiated after such declaration with the approval of the State Government, hereinafter in this section referred to as Special Avas Parishad Schemes) shall in respect of a development area remain suspended.

2. However, the U.P. Avas Evam Vikas Parishad framed a scheme known as the

Kanpur Bhoomi Vikas Evam Grahsansthan Scheme, hereinafter referred to as "Scheme 3" and the same was published under Section 28 of the Adhiniyam on 8-3-1980, 15-3-1980 and 20-3-1980 respectively. Subsequently, on 11-6-1982, the State Government granted approval to the aforesaid Scheme. On 28-8-1982, the Scheme was published under Section 32(1) of the Adhiniyam and in pursuance of the said Scheme, the U.P. Avas Evam Vikas Parishad proceeded to acquire the respondents' land. It is under such circumstances, the respondents filed petitions challenging the Scheme under which their land was acquired. The High Court was of the view that since there was no prior approval of the State Government while initiating the Scheme, as required under Section 59(1) of the Act, the Scheme was bad. In that view of the matter, the writ petition was allowed and it is against the said judgment, the appellant has preferred this appeal by way of special leave petition.

3. When the matters were taken up, learned counsel stated that these appeals stand concluded by a decision of this Court in U.P. Avas Evam Vikas Parishad v. Friends Coop. Housing Society Ltd., 1995 Supp (3) SCC 456 and, therefore, the appeals deserve to be allowed. We have looked into the said decision and are of the opinion that the said decision requires consideration by a Bench of three Judges. The learned Judges in the said decision read initiation of the Scheme under Section 28 of the Adhiniyam and whereas the initiation of the Scheme is to be found under Section 16 of the Adhiniyam. Unless there is approval of the State Government of the Scheme initiated under Section 16 of the Adhiniyam, such a scheme cannot be published under Section 28 of the Adhiniyam. There is no approval of the State Government to the Scheme initiated by the Parishad on record, and in the absence of such an approval, any subsequent approval by the State Government of the Scheme published under Section 28 of the Adhiniyam would not cure the defect.

4. Since this Bench consists of two Judges, it cannot take a view contrary to the decision taken in the case of U.P. Avas Evam Vikas Parishad¹ which was rendered by two Hon''ble Judges. We are, therefore, of the opinion that these matters require to be decided by a Bench of three Hon''ble Judges.

5. Let these appeals be placed before the Hon''ble the Chief Justice of India for appropriate orders.