

PETITIONER:

U.P. AVAS EVAM VIKAS PARISHAD & ANR.

Vs.

RESPONDENT:

FRIENDS COOP. HOUSING SOCIETY LTD. & ANR.

DATE OF JUDGMENT 24/04/1995

BENCH:

RAMASWAMY, K.

BENCH:

RAMASWAMY, K.

HANSARIA B.L. (J)

CITATION:

1996 AIR 114

1995 SCC Supl. (3) 456

1995 SCALE (3) 604

ACT:

HEADNOTE:

JUDGMENT:

O R D E R

Leave granted.

We have heard learned counsel on both sides. Since there is a conflict of decisions rendered by the High Court of Allahabad on interpretation of exception (iii) to s.59(1) (a) of the U.P. Avas Evam Vikas Parishad Adhiniya 1965 (for short, 'Adhiniyam'), we are inclined to resolve the conflict.

Declaration under s.3 was published on September 3, 1977. Notification under s.28 of the Adhiniyam was published on June 7, 1982. Immediately the appellant had sought for the approval of the Government through the letter dated July 27, 1982. The Government approved the scheme on August 24, 1982. The declaration under s. 32 of the Adhiniyam was published on February 28, 1987. The respondents filed writ Petition No. 14708/84. The Division Bench following the ratio in writ Petition No. 17372/87 dated March 18, 1993 titled Narinder Mohan Foundation Trust v. Special Land Acquisition Officer, Meerut, allowed the writ petition declaring that since prior approval of the Government was not obtained under exception (iii) to s. 59(1) (a) of the Adhiniyam, the notification under s. 28, which is equivalent to s.4(1) of the Land Acquisition Act, 1890 and the declaration under s.32, which is equivalent to s.6 declaration, are invalid and inoperative. Thus this appeal by special leave.

Relevant part of s.59(1) (a) reads thus:

"The Uttar Pradesh Avas Evam Vikas Parishad Adhiniyam 1965 (Except in relation to those housing or improvement schemes which have either been notified under s.32 of 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 s.28 of the said Adhiniyam before the said declarations are thereafter 'approved' by the State Government for constinuanace 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 the Special Avas Parishad Schemes shall in respect of a development area remain suspended...."

A reading thereof would indicate that for the development of the area the provision of the Adhiniyam shall remain suspended except in relation to three categories of the housing scheme or improvement schemes enumerated under the Act, namely, : (i) Schemes which have been notified under s. 32 of the Adhiniyam before the declaration under s.3 of the Act; (ii) Schemes for which notification under s.28 of the Adhiniyam has been issued before the notification under s.3 of the Act and are thereafter approved by the State Govt. for continuance; and (iii) Schemes which are initiated after the declaration under s.3 of the Act with the approval of the State Government.

It is to be seen that the language employed therein is that the approval of the State Government is necessary. Question is whether it would be prior approval or approval given subsequent to the notification under s.28 or declaration under s.32 is valid in law. If prior approval would have been a pre-condition for further steps, the Act would have said so. This not having been done, it seems to us what is material is to obtain approval of the State Government. The reason appears to be that when the schemes have been framed, the land suitably required for effective implementation of the scheme alone should be acquired and not in excess in the guise of framing the schemes.

This Court in Life Insurance Corpn. of India v. Escorts Ltd. & Ors, 1986 (1) SCC 264, considering the distinction between "special permission" and "general permission", "previous approval" or "prior approval" in paragraph 63 held that "we are conscious that the word "prior" or "previous" may be implied if the contextual situation or the object and design of the legislation demands it, we find no such compelling circumstances justifying reading any such implication into s.29(1) of the Act". Ordinarily, the difference between approval and permission is that in the first case the action holds good until it is disapproved, while in the other case it does not become effective until permission is obtained. But permission subsequently granted may validate the previous act. As to the word "approval" in s. 33(2) (b) of the Industrial Disputes Act, it was stated in Lord Krishna Textiles Mills Ltd. v. Workmen, 1961(1) L.L.J. 211 at 215-16 that the management need not obtain the previous consent before taking any action. The requirement that the managment must obtain the previous consent before taking any action. The requirement that the managment must obtain approval was distinguished from the requirement that it must obtain permission, of which mention is made in s.33(1).

It is seen that the approval envisaged under exception (iii) of s.59(1) (a), is to enable the Parishad to proceed further in implementation of the scheme framed by the Board. Until approval is given by the Government, the Board may not effectively implement the scheme. Nevertheless, once the approval is given, all the previous acts done or actions taken in anticipation of the approval gets validated and the

publications made under the Act thereby becomes valid.

The question then is whether present is a fit case for our interference under Art.136. On similar facts when the appellant itself has compromised with others and the same has not been extended to the respondents, we think that it is not a fit case for our interference. The respondents' society also consist of the members who need sites for construction of their houses. Right to shelter is a fundamental right, which springs from the right to residence assured in Art.19(1) (e) and right to life under Art.21 of the Constitution. No doubt their construction has also to be in accordance with lay out and building rules but that would not be a ground to refuse permission to them when they approached the authorities to sanction the same in accordance with law.

The law is declared accordingly, but the appeal is dismissed.