

CASE NO.:
Appeal (civil) 6092 of 1999

PETITIONER:
SAVITRI CAIRAE

RESPONDENT:
U.P. AVAS EVAM VIKAS PARISHAD AND ANR.

DATE OF JUDGMENT: 01/05/2003

BENCH:
V.N. KHARE CJ & S.B. SINHA & DR. AR. LAKSHMANAN

JUDGMENT:
JUDGMENT

WITH
Civil Appeal Nos. 6093 of 1999 and 6096, 6097, 6775, 6776, 6091 of 2001.
And Civil Appeal No. 4866 of 1999.
With Civil Appeal Nos. 5522 to 5524 , 5526 to 5549 of 1999 and 7224, 7225, 7263 to 7277 of 2001.

2003 (3) SCR 1081

The Judgment of the Court was delivered by

KHARE, CJ. On 5th March, 2003 when these appeals came up for hearing before a Bench of this Court, the Bench was of the view that these matters, require to be heard and decided by a Bench of three Judges. It is in this way these appeals have come up for hearing before us.

Before us, there are two sets of civil appeals-one set of appeals is at the instance of the claimants whose land has been acquired and the same is directed against the order and judgment passed by the Allahabad High Court partly allowing the first appeals of U.P. Avas Evam Vikas Parishad (hereinafter referred to as "the Parishad") and the other set of appeal is at the instance of the Parishad.

The Uttar Pradesh Legislature has enacted Uttar Pradesh Avas Evam Vikas Parishad Adhiniyam, 1965 (hereinafter referred to as "the Adhiniyam"). The Avas Evam Vikas Parishad (in short "the Parishad") was constituted under the Adhiniyam. One of the duties assigned to the Parishad under the Adhiniyam is to frame and carry out housing schemes by acquiring land. In that view of the matter, the Parishad issued a notification dated 2nd October, 1982 under Section 29 of the Adhiniyam proposing to acquire 136.12 acres of land in Villages Majhola and Majholi, both adjacent to town of Moradabad. The said notification under Section 29 was followed by a notification dated 5th May, 1984 issued under Section 92 of the Adhiniyam which corresponds to notification under Section 6 of the Land Acquisition Act. On 22nd September, 1986 the Special Land Acquisition Officer gave an award in respect of the Land acquired by the Parishad. The Land Acquisition Officer granted different rates of compensation in respect of the lands so acquired. The claimants were not satisfied with the compensation offered to them by the Collector and, therefore, they sought reference before the Reference Court. The Reference Court, by an order and judgment dated 18th April, 1990 enhanced the compensation from Rs. 56 per sq. metre to Rs. 180 per sq. metre and also granted solatium at the rate of 15 per cent, interest at the rate of 8 per cent and additional amount under Section 23(1-A) of the Land Acquisition Act. Simultaneously the Reference Court deducted 25 per cent of the compensation towards the development deductions. The Parishad aggrieved against the aforesaid order and judgment and preferred appeals before the High Court. The High Court divided the entire acquired Land into three categories by applying belting system. The

High Court granted solatium at the rate of 30 per cent instead of 15 per cent as awarded by the Reference Court and also interest at rate of 15 per cent for one year and 9 per cent for subsequent years. Consequently appeals were partly allowed.

We are first taken through the appeals preferred by the Parishad, The learned senior counsel appearing on behalf of the Parishad relied upon decisions of this Court in *Prakash Amichand Shah v. State of Gujarat and Ors.*, [1985] Suppl. 3 SCR 1925, *the State of Tamil Nadu and Ors. v. Ananthi Ammal and Ors.*, JT (1985) 1 SC 247 and *The State of Madhya Pradesh v. G.C. Mandawar*. AIR (1954) SC 493 and submitted that the grant of compensation to the claimants under the provisions of Land Acquisition Act was wholly erroneous in view of the fact that the Adhiniyam was enacted by the State Legislature whereas the Land Acquisition Act was enacted by the Parliament, the provisions of the Adhiniyam could not have been held to be ultra vires Article 14 of the Constitution of India.

The learned counsel further contended that in view of the factual matrix involved the decisions of this Court in *U.P. Avas Evam Vikas Parishad v. Jainul Islam and Anr.*, [1998] 2 SCC 467 wherein this Court was not concerned with the construction of Section 55 of Adhiniyam read with the Schedule appended thereto vis-a-vis Section 23 of the Land Acquisition Act, the matter requires reconsideration by this Courts. The learned counsel also urged that having regard to the fact that Clause 6 of the Schedule appended to the Adhiniyam specifically refers to the quantum of solatium payable by the State on acquisition of the land, enhancement thereof by invoking the provisions of Land Acquisition Act, 1894 cannot be held to be justified. Learned counsel also contended that the doctrine of incorporation by reference in a case of this nature would not lead to the conclusion that as and when any amendment is made in the Parliamentary Act, the State legislation would stand Automatically amended. In any event, having regard to the phraseology used in Section 55 of the Adhiniyam such a construction is not permissible.

The Adhiniyam was enacted for constitution of the Parishad, to provide for the establishment, incorporation and functioning of a housing and development board in Uttar Pradesh.

The Parishad indisputably has power to acquire land. Acquisition of such land for the purpose of fulfilling the object of the said Act therefore would constitute public purpose. Sub-section (3) of Section 3 of Adhiniyam provides that inter alia for the purpose of Land Acquisition Act, the Parishad shall be deemed to be a 'local authority'.

Section 55 of the Adhiniyam empowers the Parishad to acquire land which reads as under-

"55. Power to acquire land-(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. I of 1894) as amended in its application to Uttar Pradesh which for this purpose shall be subject to the modifications 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 the land under the Land Acquisition Act, 1894 (Act No. I of 1894)."

It is true that ordinarily equality clause enshrined in Article 14 of the Constitution of India cannot be invoked in the matter of enforcement of a State Legislation vis-a-vis a Parliamentary Legislation and/or the Legislation of an another State. In *G.C. Mandawar (supra)*, it was held that Article 14 does not authorise striking down of a law of one State on the ground that in contrast with a law of another State on the same subject its provisions are discriminatory, nor does it contemplate a law enacted by

Parliament or by the State legislature dealing with similar subjects being held to be unconstitutional by a process of comparative study of the provisions of the two enactments; as the sources of authority for the two statutes being different, Article 14 can have no application.

The decision in *Ananthi Animal* (supra) is also on the same line.

But the said decisions have no application in the instant case. The *Adhiniyam* provides for acquisition of land in terms of Land Acquisition Act. By reason of legal fiction created under the *Adhiniyam*, the *Parishad* is deemed to be a local authority. The *Parishad* invokes the provisions of the Land Acquisition Act in its capacity as a local authority under the Land Acquisition Act. The State issues a notification in terms of Section 29 of the *Adhiniyam* and makes declaration in terms of Section 32 thereof which are on similar terms as contained in Sections 4 and 6 of the Land Acquisition Act respectively.

The purpose for acquisition of land both under the Parliamentary Act and the State Act is the same. An order of acquisition is to be passed only by the State. In *Nagpur Improvement Trust v. Vithal Rao and Ors.*, [1973] 3 SCR 39 a 7-Judges Bench of this Court categorically held that an owner of the land is not concerned with the nature of the public purpose that is whether land is acquired for a hospital or for school or for housing. So long as the acquiring authority and the public purposes wherefore lands are acquired are the same; in view of the fact that provisions have been made for payment of compensation in terms of the provisions of Land Acquisition Act, although acquisition is made under the State Act, but if higher amount of compensation is payable under the latter, such higher amount of compensation will be payable. It was held:

"It is equally immaterial whether it is one Acquisition Act or another Acquisition Act under which the land is acquired. If the existence of two Acts could enable the State to give one owner different treatment from another equally situated the owner who is discriminated against, can claim the protection of Article 14."

It may be, as contended by the learned counsel, that therein this Court was concerned with two enactments of States but the principles laid down therein would be attracted, having regard to the fact that although acquisition is to be made in terms of the *Adhiniyam* but the procedures laid down therefor under the Land Acquisition Act are to be followed and in both the cases, the acquiring authority is the State.

This Court in *Jainul Islam* (supra) categorically held that the provisions of the Land Acquisition Act is to be read into the provisions of the *Adhiniyam*.

The said question again came up for consideration again before a 3-Judges Bench in *Nagpur Improvement Trust v. Vasant Rao and Ors.*, [2002] 7 SCC 657. In the said case also, identical contentions were raised but this Court did not find any merit therein. This Court followed *Nagpur Improvement Trust v. Vithal Rao*, [1973] 1 SCC 500 as also *Jainul Islam* (supra) holding;

"17. Clause 10 of the schedule which effects several modifications in Section 23 of the Land Acquisition Act, modifies sub-section (2) thereof as follows:-

"(2) The full stop at the end of sub-section (2) of section 23 shall be deemed to be changed to a colon, and the following proviso shall be deemed to be added:-

Provided that this sub-section shall not apply to any land acquired under the Nagpur Improvement Trust Act, 1936, except

(a) buildings in the actual occupation of the owner or occupied free of

rent by a relative of the owner, and land appurtenant thereto, and

(b) gardens not let to tenants but used by the owners as a place of resort."

19. It will thus be seen that the three State Acts follow the same pattern and incorporate a common scheme. The provisions of the Land Acquisition Act with certain modifications are made applicable to acquisitions made for purposes of execution of the schemes under those Acts. There is also a striking similarity between schedule to the Punjab and Nagpur Acts, and even though they may not be identical they are in pari materia. The schedule to the U.P. Act is not as detailed but that is due to the fact that many of the modifications in the Land Acquisition Act have been brought about by the provisions of the Act itself. The Schedule modifies sections 17, 23 and 49 of the Land Acquisition Act, and adds a new section 17-A inserted in Punjab and Nagpur Acts. It also gives to the notifications under Section 28(1) and 32(1) of the U.P. Act, the same effect as notifications published under sections 4 and 6 respectively of the Land Acquisition Act."

In Vasant Rao (supra), this court, as noticed hereinbefore, followed Jainul Islam (supra) holding:

"40. This Court in U.P. Avas Evam Vikas Parishad v. Jainul Islam and Anr. (supra) noticed the scheme of the U.P. Act and observed that Section 55 of the U.P. Act makes a reference to the provisions of the Land Acquisition Act, as amended, in its application to Uttar Pradesh, and has laid down that any land or any interest therein required by the Parishad for any of the purposes of the Ahiniyam may be acquired under the provisions of the Land Acquisition Act, as amended, in its application to the State of Uttar Pradesh, which for this purpose has to be subject to the modifications specified in the schedule to the U.P. Act. Similar provisions are found in other enactments and reference was made to the Calcutta Improvement Act, 1911 whereunder the Board of Trustees of the Calcutta Improvement Trust was entrusted with very wide powers for the purpose of carrying out improvement schemes within the municipal limits of Calcutta. After noticing the provisions of the Calcutta Improvement Act, 1911, this Court noticed the judgment of the Privy Council in Secretary of State v. Hindustan Cooperative Insurance Society Ltd. (supra) in which the question arose—whether the amendment in the Land Acquisition Act was applicable so as to confer a right of appeal to the Privy Council against the judgment of the High Court in an appeal from the Tribunal. The said question was answered in the negative by the Privy Council. This Court quoted the following passages appearing in Secretary of State v. Hindustan Cooperative Insurance Society Ltd. (supra).

"The modifications are contained partly in the body of the Act and partly in a schedule attached to the Act. They are numerous and substantial and the effect is, in their Lordship's opinion to enact for the purposes of the local Act a special law for the acquisition of land by the trustees within the limited area over which their powers extend. Their Lordships regard the local Act as doing nothing more than incorporating certain provisions from an existing Act, and for convenience of drafting doing so by reference to that Act, instead of setting out for itself at length the provisions which it was desired to adopt."

Therein this Court considered the various other decisions relied upon by learned counsel and observed:

"48. So far as the U.P. Act is concerned the judgment in U.P. Avas Evam Vikas Parishad v. Jainul Islam and Anr., (supra) answers all the questions raised before us. It has been held that so far as the U.P. Act is concerned, the Land Acquisition Act, as modified, stands incorporated in the U.P. Act. However, as a matter of construction it was held that Section 55 of the U.P. Act, while incorporating the provisions of the Land

Acquisition Act intended to apply to acquisition made under the U.P. Act the beneficial amendments that may be brought about for determination and payment of compensation, in the Land Acquisition Act, 1894. There was nothing in the U.P. Act which precluded the Court from adopting such a construction, and this was necessary to save the Act from the vice of arbitrary and hostile discrimination.

49. This Court also found that the provisions of the Nagpur Act, with which we are concerned, were similar to the provisions of the U.P. Act. This aspect of the matter has been discussed in paragraph 27 of the report. We have also considered the provisions of the Nagpur Act as well as the provisions of the Punjab Act. We are satisfied that the aforesaid two Acts as well as the U.P. Act have a common scheme and pattern. All the three legislations relate to town planning and development and each one of them specifies the various schemes that may be undertaken. For acquisition of land for the purposes of any of the schemes under the said Acts, the Land Acquisition Act, 1894 has been made applicable with certain modifications as contained in the schedule to the said Acts which are numerous and substantial. The modification made are also similar. We have found no distinction in the three Acts which may have a bearing on the question relating to legislative incorporation of the Land Acquisition Act in the State Acts. We are, therefore, of the view that what has been held by this Court in U.P. Avas Evam Vikas Parishad v. Jainul Islam and anr., (supra) with regard to U.P. Act holds good for the Punjab Act as well as the Nagpur Act. Consequently we are unable to subscribe to the view taken in Bhatinda Improvement Trust v. Dalwant Singh and Ors., (supra) that the provisions of the Land Acquisition Act have not been incorporated into the Punjab Act and that they have merely been cited or referred to in the Punjab Act."

The contentions to the effect that Article 14 of the Constitution is not attracted was also negated.

In our view, reliance placed by learned counsel on Prakash Amichand Shah (supra) is totally mis-placed. This Court therein was considering the provisions of acquisition under the Bombay Town Planning Act. Referring to the scheme of Town Planning Act it was held that the provisions of payment of compensation under the Land Acquisition Act, 1894 cannot be held to have any application. The Court held that the scheme of acquisition under the Town Improvement Act and the Land Acquisition Act are different. It was noticed that Section 32 of the Act provides for determination of the cost of the scheme, the development charges to be levied and the contribution to be made the local authority etc. It was further noticed that there were three types of taking over of land under the Town Improvement Act, firstly, under section 11, secondly under section 53 and thirdly under section 84 of the Act each being a part of the single scheme but each one having a specific object and public purpose to be achieved. It was noticed:

"While as regards the determination of compensation it may be possible to apply the provisions of the Land Acquisition Act, 1894 with some modification as provided in the Schedule to the Act in the case of lands acquired either under section 11 or under section 84 of the Act, in the case of lands which are needed for the local authority under the Town Planning Scheme which authorises allotment of reconstituted plots to persons from whom original plots are taken, it is difficult to apply the provisions of the Land Acquisition Act, 1894.

On the said findings alone it was held that provisions of the Land Acquisition Act would not be attracted.

As regard the issue as to whether Article 14 of the Constitution would be attracted or not it was noticed that in terms of the provisions of the Town Planning Scheme there is no option under that Act to acquire the land under the Land Acquisition Act.

In the instant case, for the purpose of providing housing facilities to the

people, lands undoubtedly can be acquired both under the Land Acquisition Act as also under the Adhiniyam.

Furthermore, Section 17-A inserted in the Adhiniyam also makes a difference. In Venkat Rao (supra) insertion of Section 17-A was noticed which, as noticed hereinbefore, provides that the land has first to be acquired by the Collector for the Government and thereafter it is transferred by the Government to the Mahapalika only on payment of its costs.

For the aforesaid reasons, we do not find any merit in the appeals filed by the Parishad. Coming to the appeals filed by the claimants, we do not find any infirmity in the judgment and order of the High Court. Hence, we find that both sets of appeals have no merit.

At the end, Mr. G.L. Sanghi, learned senior counsel appearing for some of the claimants urged that the High Court has committed a clerical mistake in not awarding additional compensation. Once the High Court had held that the Amending Act of 1984 was applicable for the grant of compensation, it appears that some clerical error crept into the judgment of the High Court in not awarding additional compensation. In fact, in accordance with the conclusion at which we have arrived, the claimants are also entitled to the additional compensation under Section 23(1-A) of the Land Acquisition Act. Further, the claimants are also entitled to interest at the rate of 9 per cent for the first year and 15 per cent for the subsequent years. With the aforesaid modification, both sets of appeals stand disposed of. There will be no order as to costs.