

U.P. AVAS EVAM VIKAS PARISHAD AND ANR.

A

v.

FRIENDS COOPERATIVE HOUSING SOCIETY LTD. AND ANR.

APRIL 24, 1995

[K. RAMASWAMY AND B.L. HANSARIA, JJ.]

B

*U.P. Urban Planning and Development Act, 1973 : Section 59(1)(a)—
Exception III—Interpretation of.*

U.P. Avas Evam Vikas Parishad Adhiniyam, 1965 :

C

*Housing Scheme—Notifications for—Government approval subsequent
to issue of notification—Held approval valid dates previous action taken in
anticipation of a approval—Notification and declaration published under
Sections 28 and 32 held valid.*

For a development scheme the appellant-Vikas Parishad published a Notification dated 7th June, 1982 under Section 28 of the U.P. Avas Evam Vikas Parishad Adhiniyam, 1965. It sought Government's approval of the scheme on July 27, 1982 which was granted on August 24, 1982. The declaration under Section 32 was published on February 28, 1987. The respondents filed a writ petition before the High Court which held that the notification issued under Section 28 and the declaration issued under Section 32 of the Adhiniyam were invalid and inoperative since the prior approval of the Government was not obtained under Exception (iii) to Section 59(1)(a) of the U.P. Urban Planning and Development Act, 1973.

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Against the decision of the High Court an appeal was preferred before this Court.

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Dismissing the appeal, this Court

HELD : 1. The approval envisaged under Exception (iii) of Section 59(1)(a) of the U.P. Urban Planning and Development Act, 1973 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 get validated and the publications made under the Act thereby become

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A valid. If prior approval would have been a pre-condition for further steps, the Act would have said so. This not having been done, 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. [732-H, 733-A, 732-C]

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Life Insurance Corporation of India v. Escorts Ltd. & Ors., [1986] 1 SCC 264 and *Lord Krishna Textiles Mills Ltd. v. Workmen*, [1961] 1 L.L.J. 211, referred to.

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Narinder Mohan Foundation Trust v. Special Land Acquisition Officer, Meerut, Writ Petition No. 17372 of 1987 decided by Allahabad High Court on 18.3.1993, disapproved.

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2. On similar facts when the appellant itself has compromised with others and the same has not been extended to the respondents, it is not a fit case for Court's 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 Article 19(1)(e) and right to life under Article 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 approach the authorities to sanction the same in accordance with law. [733-B, C]

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CIVIL APPELLATE JURISDICTION : Civil Appeal No. 5433 of 1995.

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From the Judgment and Order dated 19.8.1994 of the Allahabad High Court in C.M.W.P. No. 14708 of 1984.

M.N. Krishnamani and P.K. Jain for the Appellants.

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A.S. Pundir for the Respondents.

The following Order of the Court was delivered :

Leave granted.

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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. Urban Planning and Development Act, 1973 (for short, 'Act'), we are inclined to resolve the conflict. A

Declaration under s.3 was published on September 3, 1977. Notification under s.28 of the U.P. Avas Evam Vikas Parishad Adhiniyam, 1965 (for short '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 Act, 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. B C D

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 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 the Special Avas Parishad Schemes shall in respect of a development area remain suspended....." E F G

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 Adhiniyama, namely, : (i) Schemes which have been notified under s.32 of the Adhiniyam before the declaration under s.3 of H

A 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.

B 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.

C 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.

D 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" "previous" may be implied if the contextual situation or the object and design of the

E 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 sub-

F sequently 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 management must obtain approval was distinguished from the requirement that it must obtain permission, of which

G mention is made in s.33(1).

H 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 get validated and the publications made under the Act thereby become valid. A

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. B C

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

T.N.A.

Appeal dismissed. D