

Lucknow Improvement Trust vs Ch. Mohd. Saddiq And Ors. on 23 March, 1950

Equivalent citations: AIR1952ALL346, AIR 1952 ALLAHABAD 346

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Bench: V. Bhargava

JUDGMENT

Chandiramani, J.

1. This is the defendant's appeal from the judgment and decree, dated 8th May 1945, of Shri Data Ram Misra, Civil Judge, Maliahabad, Lucknow.

2. Sheikh Mohammad Sadiq, his brother Mohammad Baqar, his sister Malka Begam and his mother Fahima Begam are the plaintiffs in this suit. They claimed ownership of two plots of land ABCD and EFGH marked as properties Nos. 1 and 2 in the plan attached to the decree. It appears that the two plots are 101 feet 9 inches x 57 feet and 89 feet 6 inches x 57 feet. The plot marked as property No. 1 is situated to the north of Marris Market, Lucknow, and the other plot marked as property No. 2 is to the south of the Marris Market. The plaintiffs said that in 1983 the defendant, Lucknow Improvement Trust, framed a scheme called "Marris Market Extension Scheme" which comprised only a 20 feet strip of land marked ABPQ and EPXY, but under Section 36, U. P. Town Improvement Act the entire properties Nos. 1 and 2 were notified for acquisition. On plaintiffs' protest the defendant offered to release all land except the strip of 20 feet from both the properties on condition that the strip was given free of cost, but the plaintiffs did not agree thereto. The scheme was eventually dropped. In 1996 the defendant framed another scheme called "Revised Marris Market Extension Scheme" and published a notification under Section 36, Town Improvement Act in respect of the whole of, properties NOS. 1 and 2. The plaintiffs again objected and the resolution No. 7702, dated 24th April 1937, of the Trust was that the plaintiffs should transfer 20 feet strip of land to the defendant and should build on the rest of the property according to their plan and in accordance with this resolution the scheme was sent to Local Government for sanction. The plaintiffs said that the resolution had not been communicated to them, but they came to know of it shortly before they filed the suit and they communicated their full acceptance to the defendant; that the terms of the resolution were always acceptable to them, but no chance was given to them to comply with it. The plaintiffs contended that the revised scheme does not fall within any of the types of schemes under Section 24, U. P. Town Improvement Act, VIII [8] of 1919. According to them, the extension of the market, which already belongs to the defendant, is not a purpose under the Act and so the proceedings for acquisition are ultra Vires. They further contended that even if the action taken for acquisition is legal then the acquisition of portions exceeding the strip of 20 feet

is neither necessary for nor affected by the execution of the scheme and the acquisition of the excess portion is also against the resolution of the Trust passed in 1937. It was contended that for this reason the defendant was Liable to be restrained by injunction. The plaintiffs, therefore, prayed: (1) for issue of injunction restraining the defendant from proceeding with proceedings to acquire and take possession of (a) the entire properties 1 and 2, or (b) those portions in excess of 20 feet shown by letters QPCD, HGXY and (2) ordering defendant to take back the requisition sent to the Deputy Commissioner, Lucknow, for proceedings.

3. The defendant admitted that the plaintiffs are owners of the properties Nos. 1 and 2 and that a scheme was framed in 1932 but it was abandoned. They alleged that the present revised scheme was framed in 1936, that in the public interest it was considered necessary to acquire the whole of properties 1 and 2 and later on in 1944 Resolution No. 9998 was also passed to that effect, that only a portion of the property could not be acquired that the Local Government had sanctioned the scheme and this sanction was notified under Section 42 of the Act and, as the Local Government is the sole judge of the validity of the scheme, it could not be challenged. It was further contended that the scheme framed was a combination of several types providing inter alia for housing accommodation for Khatiks carrying on business in Marris Market which itself was constructed under a housing accommodation scheme under Sections 24 (g) and 31, Town Improvement Act. It was further stated that the scheme provided for improvement of sanitation by removal of a public latrine situated within the area of the scheme and for roads and parking place for cars etc. all purposes under Clauses (a), (j), (k), (d), (o) and (p) of Section 23 of the Act and that in effect the scheme was really a second vegetable Sellers' House Accommodation Scheme. The defendant further contended that Section 56 (d), Specific Relief Act, applied and, further, the suit having been filed after commencement of the acquisition proceedings, injunction could not be granted. It was alleged that the Local Government was a necessary party to the suit. The following issues were accordingly framed :

1. Were the acquisition proceedings ultra vires of the defendant as alleged in paras. 7 and 8 of the plaint ?
2. Whether the acquisition of the property in suit necessary (or the execution of the scheme or the property is affected by the execution of the scheme ?
3. Whether the acquisition of the property in suit is contrary to the resolution No. 7702, dated 24th April 1937?
4. Is the U. P. Government a necessary party in this case ?
5. Is the suit for injunction not maintainable as alleged in para. 16 of the written statement ?
6. Whether the Court has got jurisdiction to enquire into the validity of the scheme ?
7. What is the effect of the resolution No. 9998 ?

8. To what relief, if any, are the plaintiffs entitled ?

4. On issue No. 1 the Court held that the acquisition proceedings are ultra vires. On issue No. 2 it held that the portion in excess of 20 feet is neither necessary nor affected by execution of the scheme. On issues NOS. 3 and 7 the Court held that the acquisition of the whole of properties 1 and 2 was contrary to resolution No. 7702 and the second resolution No. 9998 was not justified and had no effect. On issue No. 4 it held that Government is not a necessary party. On issue No. 5 it held that the suit is not barred under Section 56(d), Specific Relief Act. On issue No. 6 it held that the Court has jurisdiction to enquire into the validity of the scheme. On issue No. 8 it granted the relief of injunction in respect of the whole of the properties 1 and 2.

5. The defendant being dissatisfied with the decree has appealed to this Court. It has been urged by the appellant that the trial Court was wrong in holding that it could enquire into the validity of the scheme, or that the entire land in suit was neither necessary nor effected by the scheme, that the Court was also wrong in holding the scheme to be ultra vires and the Court was also wrong in holding that the Trust had no justification to pass resolution No. 9998. It has accordingly been prayed that the appeal be allowed and the suit of the plaintiffs be dismissed with costs.

6. It has been argued for the appellant that by virtue of provisions of Section 2, Sub-section (2) of the Schedule attached to the U. P. Town Improvement Act, the effect of notification under Section 42, Town Improvement Act is that it is not open to anyone to say that the land is not required for the purposes of the Act. It is said that the effect of the notification under Section 6(3), Land Acquisition Act is that nobody can say that the land is not required for public purpose or a company, and, since, Section 2(2) of the Schedule provides that the notification under Section 42 is substituted for and has the same effect as a notification under Section 6(3), Land Acquisition Act, it must be held that it is not open to anyone to say that it is not required for purposes of the Act. In my opinion, the contention raised is not correct.

7. Under Section 56, U. P. Town Improvement Act the Trust can with the previous sanction of the Local Government acquire land for purposes of the Act. How the sanction is to be obtained is separately provided for in the Act. When the sanction is obtained, it is notified in the Gazette under Section 42. The procedure for acquiring is that provided under the Land Acquisition Act as modified by the Act and further modified by the Schedule (SECTION 66 and 68 (b), Town Improvement Act) Section 2(2) of the Schedule provides inter alia that when no notification under Section 6, Land Acquisition Act, is in force notification under Section 42, U. P. Act, shall be substituted for and have the same effect as declaration under Section 6, Land Acquisition Act. When land is required for a public purpose, or a company, the Local Government issues a notification first under Section 4, Land Acquisition Act, as a result of which certain acts can be done on the land to be acquired. Thereafter objections are invited and considered by the collector. The Collector then submits a report to the Local Government who finally decide the objections & also finally decide whether the land should or should not be acquired. If they decide to acquire the land then a declaration is made under Section 6 that the land is required for a public purpose, or for a company. The declaration is then published in the official Gazette and Section 6(3) provides that such declaration is conclusive evidence that the land is required for a public purpose or for a company. Thereafter the Local

Government is authorised to acquire the land in the manner provided under the Land Acquisition Act. This is the preliminary investigation under the Land Acquisition Act. The steps taken under the Town Improvement Act up to the time of notification under Section 42 may be said to be the preliminary investigation which deals only with framing and sanction of an improvement scheme. The corresponding procedure under the Land Acquisition Act relates only to the investigation whether land is required for a public purpose or for a company. The U. P. Town Improvement Act in Section 42(2) specifically provides that publication of notification is conclusive evidence that the scheme has been duly framed and sanctioned by the Government while in marked contrast Section 6(3), Land Acquisition Act, provides that the notification under Section 6 is conclusive evidence that the purpose is a public purpose or that the land is required for accompany. The subjects dealt with are entirely different & so it is not possible to say that notification under Section 42 (2) has the effect of preventing anyone from saying that the acquisition is not For purposes of the Act. Had it been the intention to prevent inquiry as to whether the purpose of the acquisition was one tinder the Act the legislature could have easily provided under Section 42 (2) that the publication of notification will be conclusive evidence that the land is required for purposes of the Town Improvement Act. It appears to me that under the procedure laid down by the U. P. Town Improvement Act notifications under Sections 4 and 6 are not to be issued but instead notifications under Sections 86 and 42 have to serve the same purpose and to this extent the provisions of the Land Acquisition Act have been modified. After the issue of notification under Section 4, the authorities concerted can do things as provided for under Section 4(2). Similarly after notification under Section 6, the Local Government may acquire the land. These are some of the effects of the notification under Sections 4 and 6, Land Acquisition Act and under the provisions contained in the Schedule to the U. P Town Improvement Act same are the effects of notifications under Sections 36, 42. U. P. Act. I have no hesitation, therefore, in holding that the plaintiffs-respondents are in no way precluded from saying that the purposes of the scheme are not those under the Town Improvement Act.

8. The trial Court relied on Trustees for the Improvement of Calcutta v. Chandra Kant Ghose, A. I. R. (7) 1920 P.C. 51 holding that it applied to the present case. The facts of that case were, however, quite difference. There the Calcutta Improvement Trust by virtue of powers under Section 42, Calcutta Improvement Act of 1911 sought to acquire certain lands of the respondents for a street improvement scheme for creating new or improving the existing means of communication and facilities for traffic. It was found that the respondents' land was not required for the execution of the scheme but it was land affected by the scheme and the trustees intended to sell the land to ease the burden of public expenditure. It was held that under the Calcutta Improvement Act such a purpose was legitimate and within the powers of the trustees, Section 49, Calcutta Improvement Act, relating to the sanction of the scheme is in the same terms as Section 43, U. P. Town Improvement Act and similarly Sections 69 and 71, Calcutta Act, relating to the powers of acquisition are in similar terms as Sections 56 and 58, U P, Town Improvement Act. However, in the Schedule to the Calcutta Improvement Act there is no section corresponding to Section 2 of the Schedule in the U. P. Town Improvement Act. Section 3 of the Schedule which records modification in the Land Acquisition Act. 1894, referred to in the Schedule as "the said Act" reads as follows :

"2. (1) The first publication of a notice of an improvement scheme under Section 36 of this Act shall be substituted for and have the same effect as publication, in the

Gazette and in the locality of a notification under Sub-section (1) of Section 4 of the said Act, except where a declaration under Section 4 or Section 6 of the said Act has previously been made and is still in force.

2. Subject to the provisions of Sections 10 and 11 of this Schedule, the issue of a notice under Sub-section (4) of Section 29 in the case of land acquired under that Sub-section, and in any other case the publication of a notification under Section 42 shall be substituted for and have the same effect as a declaration by the Local Government under Section 6 of the said Act, unless a declaration under the last mentioned section has previously been made and is still in force."

The effect of Section 2 is to substitute notifications under Sections 36 and 42, U. P. Town Improvement Act for the notifications under Sections 4 & 6, Land Acquisition Act. It will thus appear that under the Calcutta Improvement Act it was still necessary after the Local Government's sanction under Section 49 of the Act to issue notifications under Sections 4 and 6, Land Acquisition Act. In the Calcutta case referred to above their Lordships held :

"Whenever the Local Government does sanction an improvement scheme, there is duty to announce the fact by notification and the publication of a notification is conclusive evidence that the scheme has been duly framed and sanctioned. This provision does not affect the right of the respondent to institute a suit to have it declared that the Board in framing the scheme acted ultra vires or that the scheme as sanctioned does not authorise the appellant to acquire by compulsion the land in question."

The point now in consideration, namely, that by virtue of the provisions of Section 2 of the Schedule it was not open to question the purpose of the scheme did not, therefore, arise and was not decided and so that case does not help the appellant.

9. The trial Court also relied on *Municipal Corporation of Bombay v. Ranchordas Vandravandas*, A. I. R. (12) 1925 Bom. 539. There the Bombay Municipality wanted to acquire a land for certain public purposes. Notifications under Sections 4 and 6, Land Acquisition Act were issued. The defence was that the property could not be acquired by the Municipality for erecting quarters for municipal servants and for erecting shops to be let out on hire for profit and for recoupment of expenses incurred in acquisition of other land acquired, or to be acquired, for legitimate purposes. It was held that notwithstanding the provisions of Section 6(3), Land Acquisition Act, the Court could decide whether the Bombay Municipality were or were not empowered by the Municipal Act to acquire the land. The facts of this case are different from the present one, but this case clearly lays down that the Court has jurisdiction to enquire into the exercise of the powers by the municipality or a statutory body. Had the effect of Section 2 of the Schedule of the U. P. Town Improvement Act been the same as that of the notification under Section 6, Land Acquisition Act, as now contended it would appear on the authority of this case that the present suit would be cognisable by the civil Court.

10. The learned counsel for the appellant relied on *Secretary of State v. Akbar Ali*, 45 ALL. 443 where it was held that when a declaration has been issued under Section 6, Land Acquisition Act, stating that land is required for a public purpose, a Court is debarred from enquiring into the question whether the purpose for which the land in respect of which notification has been issued is required for a public purpose or not. The present case is quite different from that and challenges the authority of the Improvement Trust to acquire lands for purposes for which they are sought to be acquired.

11. The questions involved in the present suit are undoubtedly of a civil nature and under Section 9, Civil P. C. the civil Court has jurisdiction to try suits of a civil nature unless the jurisdiction of the Court is either expressly or impliedly barred. There is nothing in the Land Acquisition Act or in the U. P. Town Improvement Act which bars the present suite.

12. It is again settled law that when a special tribunal or a statutory body acts ultra vires, or refuses to exercise its jurisdiction; or acts mala fide or arbitrarily in exercise of its jurisdiction the civil Court has power to interfere and set matters right, I therefore, hold that the present suit is cognisable by the civil Court and the Court has power to enquire into the fact whether the purposes for which the land is being acquired are purposes of the Town Improvement Act.

13. The next question that arises is whether the powers in connection with the scheme have been validly exercised, or to put it in terms of the issue framed in the case--whether the acquisition proceedings were ultra vires of the defendant ?

14. The scheme, Ex. 6, dated 5-10-1936, of the Executive Officer of the Lucknow Improvement Trust shows that Marris Market was established in 1925. The first extension scheme in connection with the market was framed in 1932 and the plaintiff's land now in dispute was considered necessary for that scheme. Exhibit 8, dated 20-12-1932, is the objection that was filed by Sheikh Mohammad Sadiq, one of the plaintiffs to that scheme. This objection was considered on site on 28-2-1933, as appears from Ex. 9 and the plaintiff was told that if he complied with the conditions in para. 2 of Ex. 9 then the question of release will be considered. The trust intended to acquire the entire properties 1 and 2 are not merely a strip of land 20 feet wide. After this decision was communicated to the plaintiff he submitted a petition, Ex. 12 dated 19-7-1933, saying that he would give only such portion out of property No. 1 as was required for extension of the road, but in no case would he give any land exceeding 20 feet in width, and from property No. 2 he would give only a strip of 20 feet. Apparently after this, some negotiations were carried on between the trust and the plaintiffs and owners of other properties sought to be acquired by the Trust in order to obtain the lands by negotiations (See Ex. A6). Finally on 1-5-1934, it was decided to include the present properties Nos. 1 and 3 in the scheme as there was no settlement, but it was expected that the parties whose lands were sought to be acquired would be inclined to settle the matter after the sanction had been received from the Government for then the trust would be in a position to acquire the land compulsorily. The scheme was then directed to be sent to Government by resolution dated 31-5-1934 (Ex. 7). It is not known when the scheme was actually submitted to Government for sanction, but it was for consideration before the Government in 1935 as appears from Ex. A8, dated 13-4-1936. The scheme was returned to the Trust for reconsideration particularly because the approval of the Municipal Board to the

scheme was conditional and more than 3 years had already passed since the Trust had framed the scheme and certain information as to the sources and extent of income had not been disclosed.

15. The present revised scheme for extension of the Marris Market was accordingly framed as appears from EX. P. W. 2/1, dated 25-2-1939, Exhibits, dated 5-10-1936, disclosed in brief the purposes of the scheme. The scheme was as follows:

"REVISED MARRIS MARKET EXTENSION SCHEME"

1. This Market was established in 1925, consisting of a main building with entrances from the Latouche and Nazirabad Roads and open platforms to the North and South of it. The present needs of the Market have far out grown accommodation available and extension of the Market is urgently needed to avoid the congestion which prevails at present.

2. This extension scheme consists of the making of new stalls to the south of the market, a lieu of shops on the West of the market, the removal of a latrine which is at present most unsuitably placed close to the market, the provisions of two cart stands and of a road to facilitate easy movement of carts into and out of the market, and the construction of quarters to house the stall keepers. It is also intended to provide for a parking space for motor cars, tongas, etc., on the other side of the Latouche Road, to avoid the present congestion of traffic on that road, if it is found impracticable to remove the latrine from its present site, it will be re-built in such a manner as to prevent its being a nuisance in the vegetable market.

Section It is proposed to acquire an area of B. 2-13-0-0; of this area 16 biswas will be made into roads and lanes, 10 biswas will be used for the making of stalls and platforms and open spaces, 15 biswas will be used for the construction of quarters for stall keepers and others and 12 biswas will be disposed of by sale.

Sd./- Sucha Singh, 5th October.

Executive Officer, Lucknow Improvement Trust.

16. Objections were invited to the scheme as required by law. The plaintiff, Mohammad Sadiq, filed his objections, Ex. 10, dated 18-1-1937. He and that he was willing to abide by the offer of 19-7-1933, contained in his previous letter Ex. 13 of that date, namely, that he would not give in any case more than a 20 feet strip out of properties 1 and 2 for roads. In Ex. 10 he further stated that he would give the land necessary for the market only on condition that if later on land was not found to be actually included in the market it will be returned to him. He further proposed in the alternative that he should be permitted to build the market according to the plan of the Trust. These objections of the plaintiff were considered by the Trust on 24-4-1937, (Ex. 5) and the orders passed are Contained in the remarks column in Ex. 11. It was decided that if plaintiff Mohammad Sadiq transfers his strip of 20 feet land from both the properties NOS. 1 and 2 unconditionally and without claiming any easements on the portions to be transferred on payment to him of price originally paid by him and it within one year of the scheme being put into operation he builds on the remaining portions of

properties 1 and 2 in accordance with a design to be approved by the Trust on pain of rendering the property liable to acquisition at the end of the year an agreement may be entered into with him. These orders were admittedly not communicated to the plaintiff. It is not known exactly what happened during the period till 26-2-1939, but on 25-2-1939 the scheme was forwarded to Government for sanction (Ex. P.W. 2/1 for acquiring among others the whole of properties 1 and 2. The scheme has been explained in detail in this document. The original scheme was slightly modified to the extent shown in para 2(b) of the letter as provision had been made for providing sweepers' quarters. In the letter it is stated that the four main purposes of the scheme are: (1) Removal of latrine, (2) Extension of stall area, (3) Housing of Khatiks, and (4) Facilitating movement of traffic in the market area. In para. 3 it was explained that the scheme as it stands may appear to be a losing one, but it was then pointed out that from the decision arrived at on the objections it would be seen that certain properties estimated to cost RS. 64,000 would be released on certain conditions being fulfilled and thus acquisition cost would be reduced. This no doubt refers to the intention of the Trust with respect to properties 1 and 2 of the plaintiffs as explained in Ex. 11 of 24-2-1937. The letter further states that the properties have been included to have a hold over the owners and would be released automatically after the scheme sanctioned by Government is put into operation and the owners fulfil the conditions imposed by the Trust. It was said that for the reasons given above the properties intended to be exempted had not been released at that stage. The letter further pointed out the income which was expected to be derived as a result of execution of the scheme. It was mentioned in the letter that the road leading to the market from Latouche Road is extremely steep and narrow and the trustees were impressed with the urgent need of widening the road which had been the scene of several accidents. In the opinion of the Chairman the heavy rush of traffic could not be controlled without executing the scheme.

17. The modified scheme as submitted by the Chairman was sanctioned by Government and the sanction was notified under Section 42 (1), U. P. Town Improvement Act by notfn. No. 414/XVI-(P. H.)-36 I.T., dated 9-6-1942.

18. The learned trial Court has thought that the scheme is ultra vires as it seeks to provide housing accommodation for Khatika, but it has not been shown that Khatika are residents of an area to which the Act has been extended. This objection, it will be noticed, was not raised even by the plaintiffs. The only grounds for holding the scheme ultra vires are stated to be those in paras. 7 and 8 of the plaint and are as follows :

"7. That Revised Marris Market Scheme does not fall within any of types of the Improvement Schemes as contemplated by Section 24, Town Improvement Act, as Marris Market is the property of the defendant and its extension is not a purpose which is sanctioned by the U. P. Town Improvement Act. Consequently the acquisition proceedings are ultra vires of the defendant.

Section That even if the said scheme be held infra vires of the defendant, then the acquisition of the portions marked Q. P. C. D. and H. G. X. Y. of the properties Nos. 1 and 2 is neither necessary nor affected by the execution of the said scheme and further the acquisition of these portions is contrary to the resolution No. 7702, dated

24-4-1937 the terms of which were always acceptable to the plaintiffs and the plaintiffs are still willing to abide by those terms. The defendant is legally liable to be restrained from proceeding with the acquisition of those properties."

In these circumstances the defendant had really no chance to meet the case set up by the trial Court on this point.

19. The trial Court has also remarked that the ultimate object of the scheme was to increase the income of the defendant. It held this to be another ground for holding the scheme to be ultra vires. In the forwarding letter of the Chairman (EX. P. W. 2/1) it was stated that the scheme was a losing one but an income approximating RS. 19,000 would be derived from sale of land and sale of materials and an income of Rs. 4500 per year would be derived from rent of shops and quarters and open platforms, and it was upheld that the scheme would pay for itself in the long run. It is only natural to expect that when public money is spent by the Trust, the Trust will take care to incur as little wasteful and un-productive expenditure as possible and will try to make as much income out of the investment as can legitimately be made. Under Section 23 (g), U. P. Town Improvement Act, the Trust is authorised to make an improvement which may provide for the sale, letting, or exchange of any property comprised in the scheme. Further Section 65 of the Act is as follows :

"Subject to any rules made by the Local Government under Section 72 of this Act, the Trust may retain or may let on hire, lease, sell, exchange or otherwise dispose of, any land vested in or acquired by it under this Act."

There is thus no doubt that the Trust possesses the power to retain or let out on hire, lease, sell, exchange or otherwise dispose of any land vested in or acquired by it under the Act. The means of acquiring further income under the scheme are, therefore perfectly legitimate.

20. The Court also thought that if the Trust intended to remove congestion due to growing needs of the population it would have been better advised to make schemes for markets in other localities like Aminabad and Naka Hindola and the like. The power to make a scheme is vested in the Trust alone and if the scheme is sanctioned by the Local Government it is not for the civil Court to say whether the scheme is good or bad.

21. It will thus be seen that none of the reasons given by the Court for holding the scheme ultra vires holds good.

21a. The way in which the learned Judge in the Court below has dealt with the matter leaves the impression that the learned Judge has not really examined the details of the scheme itself. Exhibit 6 is the scheme and it is fully explained in the Chairman's letter Ex. P. W. 2/1. The four main purposes as explained in the letter are : (1) Removal of latrine ; (2) Extension of stall area ; (3) Housing of Khatika (vegetable sellers); and (4) Facilitating movement of traffic in the market area. It also shows that some of the land will later be sold and that new residential quarters for sweepers and stall-keepers will be let out on hire. The purposes of the scheme thus come under Section 23 (a), (f), (g), (h), (k), (l), (n) and (o), U. P. Town Improvement Act. In relation to removal of the existing

latrine and construction of new ones the scheme contains some features of a general improvement scheme under Section 25. The scheme provides for creating or improving the existing means of communication and facilities for traffic and so contains features of a street scheme under Section 28 (i)(c). The scheme has also the features of a housing accommodation scheme under Section 31. Section 24 clearly lays down that the scheme shall be one of the eight types given in the section, or may combine two or more of such types, or may combine any special features thereof. The scheme is thus a perfectly valid scheme and within the powers of the Trust.

22. It was urged on behalf of the respondents that the proceedings of the Trust relating to the acquisition were not in good faith and an attempt was being made to perpetrate a fraud en statute. It was pointed out that according to the resolution No. 7702 of the Trust, dated 28-2-1933, the Trust were willing to take only a 20 feet strip from the plaintiffs from both the properties 1 and 2 and to release the rest on certain conditions being fulfilled (EX. 19), It was further said that the plaintiff Mohammad Sadiq undertook on 19-7-1933, to give the 20 feet strip and actually thereafter the Trust tried even to acquire the lands free but failed, that the plaintiff Mohammad Sadiq reiterated his offer in his objections to the present revised scheme and even then the Trust was prepared to abide by its decision on the earlier objection of the plaintiff, but this time the Trust did not give him an opportunity to comply with their desire. It was further said that even in the letter of the Chairman (EX. P. W. 2/1) it was mentioned that certain properties to be acquired at the cost of Rs. 54,000 will be released after the sanction of the scheme should the owners comply with certain conditions and that; the plaintiffs' property was included in this category and the plaintiffs' land has been included simply to have a hold on them. It was further urged for the respondents that Resolution No. 9998 of the Trust was parsed on 20-4-1944, for acquisition of proper, ties Nos. 1, 2, 8 and 4 because the acquisition was then thought necessary in connection with another contemplated scheme, called the "Khayaliganj Slum Clearance Scheme" and from the cancellation of Resolution No 9884, dated 22-12-1943, it appeared that the idea of acquiring properties 1 and 2 at least had been dropped. It was said that the idea of acquisition having thus been given up it was necessary for the Trust to go through the entire procedure again as required by Section 43, U.P. Town Improvement Act, when they thought of again acquiring properties 1 and 2. On all these grounds, it is urged that the Trust required in fact no more than 20 feet strip at the most for their scheme and inclusion of rest of the land was improper and not bona fide.

23. The consideration of the evidence does not justify this contention. From the very beginning in 1932 when the scheme for extension of the market was framed the Trust had desired to acquire the whole of the properties 1 and 2. The plaintiff Mohammad Sadiq was agreeable to offering only a strip of 20 feet. The Trust was agreeable to accept it subject to the conditions in para. 3 of Ex. 9, namely, that unsightly stalls in existence will be removed and on the remaining land buildings would be erected according to the plan of the Trust. This decision was communicated to the plaintiff, but he did not accept it and instead made a counter offer in Ex. 12 on 19-7-1933, reiterating that he would give only a strip of 20 feet. Private negotiations were carried on with him as appears from Ex. A6, but apparently they were fruitless. No doubt, at that time an effort was being made to get the land free from him. It is not improbable that negotiation failed because of it. However, that is not material now because under the revised extension scheme on the objection of the plaintiff Mohammad Sadiq 16 was clearly stated that he would be paid for the land and the question of

release of land in excess of 20 feet strip would be considered if he complied with the other terms regarding constructions within a fixed time at his expense according to the Trust plan. This resolution was certainly not communicated to the plaintiff but under Section 40 (1) of the Act, it is the duty of the Trust to consider the objections and no duty is east on them to communicate their decision to the objector (plaintiff). In the explanatory letter, EX. P. W. 2/1, sanction was asked for acquisition of the entire properties of the plaintiffs and not for any portion thereof. As in the decision of the plaintiffs' objection it was stated that some land would be released on plaintiffs' complying with certain conditions the position was explained to the Government. The Trust did want the whole land for their scheme, bus they kept an eye on the expenditure involved and it was only reasonable that they should adopt measures which would secure their object and at the same time involve them in the minimum of expenditure. One method thought of by the Trust was that the owners of the properties sought to be acquired may at their own expense do what the Trust may otherwise have to do themselves. From previous dealings with the plaintiff they knew that he would not of his own accord knew that the Trust had got the power to acquire his lands and get the thing done, the plaintiff might adopt a more constructive and helpful attitude. Further, the Trust must have been fully aware that if they did not include the entire properties l and 9 in their scheme and obtain sanction for their acquisition they would have under Section 43 (b) of the Act to follow the procedure prescribed for a new scheme which would naturally delay matters unreasonably. On the other hand, if the entire land was already included in the scheme sanctioned by the Government there would be no legal difficulty in releasing from acquisition so much of the land as the Trust did not require owing be readiness of the plaintiff to do on that land what the Trust desired to be done. Under Section 43 of the Act, it is permissible for the Trust after a scheme has been sanctioned and before it has been carried into execution to alter it without any further sanction from the Government in such a way as to decrease the cost of execution. For this reason, even if by resolution No. 9884, dated 22-12-1943, the Trust expressed a desire not to acquire the entire properties l and 2 of She plaintiffs, or properties NOS. 3 and 4 of other persons, they were acting strictly within the scope of their statutory authority and for the same reason they were within their rights to first modify the resolution No. 7702 or be cancel resolution No. 9884, dated 32-12-1943 and pass another resolution dated 20-4-1944, to acquire the entire properties No. 1, 2, 3 and 4.

24. It has been pointed out for the respondents that properties Nos. 3 and 4 were also included in the scheme and the owners of these properties obtained an injunction like the plaintiffs against the Trust. The Trust filed an appeal before the District Judge, Lucknow and by compromise the Trust has released the properties from acquisition. A copy of the compromise decree was allowed to be produced at the hearing of this appeal as the learned counsel for the respondents stated that it had been produced solely for the purpose of showing that the properties Nos. 3 and 4 were released and on that footing the learned counsel for the appellant bad no objection. The release of the properties 3 and 4 cannot affect the propriety of the scheme with respect to the plaintiffs' property

--the more so when it is not known under what circumstances and for what reasons properties 3 and 4 were released.

25. Considering the facts and circumstances relating to the scheme now in question I have no hesitation in holding that the Trust has been acting fairly and with due consideration to the

plaintiffs, and it has scrupulously tried to acquire only so much land as it has considered necessary for the execution of the scheme. It is really impossible to hold that any attempt has been made by the Trust to commit a fraud upon the statute, nor can it be said that they have acted mala fide. It has already been shown that the scheme is entirely within the four corners of the Act and the Trust is clothed with full authority to execute the scheme as framed. The scheme is, therefore, not ultra vires.

26. Before closing the judgment it must be pointed out that the trial Court on its own finding that a 20 feet strip of land was necessary was wrong in granting injunction in respect of that portion also, and the learned counsel for the respondents frankly and properly conceded that he could not support this portion of the lower Court's decree.

27. I am satisfied that the scheme is perfectly valid and within the scope of the authority and powers of the Trust, and the injunction cannot be granted. Accordingly I allow this appeal, set aside the decree of the trial Court and dismiss the plaintiffs' suit. The defendant appellant shall get his costs of both the Courts from the plaintiff respondents.

V. Bhargava J.

28. I agree with my brother Chandirmani and would, for the reasons given by him, allow the appeal, set aside the decree of the trial Court and dismiss the plaintiffs' suit with costs in both Courts.