

Khadim Hussain vs State Of U.P. & Others on 18 December, 1975

Equivalent citations: 1976 AIR 417, 1976 SCR (3) 1, AIR 1976 SUPREME COURT 417, 1976 (1) SCC 843, 1976 MCC 27, 1976 3 SCR 1, 1976 UJ (SC) 302

Author: M. Hameedullah Beg

Bench: M. Hameedullah Beg, A.N. Ray, Ranjit Singh Sarkaria, P.N. Shingal

PETITIONER:
KHADIM HUSSAIN

Vs.

RESPONDENT:
STATE OF U.P. & OTHERS

DATE OF JUDGMENT 18/12/1975

BENCH:
BEG, M. HAMEEDULLAH
BENCH:
BEG, M. HAMEEDULLAH
RAY, A.N. (CJ)
SARKARIA, RANJIT SINGH
SHINGAL, P.N.

CITATION:
1976 AIR 417 1976 SCR (3) 1
1976 SCC (1) 843

ACT:

U.P. Town Improvement Act, 1919-Sec. 36 U.P. Avas Evam Vikas Parishad Adhiniyam 1966-Sec. 32(1)-Trust appointed under an earlier Act-Term of office took place under subsequent Act-If invalid Change in the name of the scheme-If invalidates.

HEADNOTE:

On March 21, 1963, the trustees of the Gorakhpur Town Improvement Trust were appointed by a notification under s. 4 of the U.P. Town Improvement Act, 1919. The Trust notified a Housing Scheme on March 13, 1965, under s. 36. The 1919 Act was repealed by the U.P. Avas Evam Vikas Parishad Adhiniyam 1966, and, the Housing Scheme was finally

sanctioned under s. 32(1) of the

The appellant challenged in the High Court the validity of the Housing Scheme, but, the High Court dismissed the writ petition.

On appeal to this Court, it was contended (1) that the trust was never properly constituted because the commencement of the terms of office of first trustees took place only after the repeal of the 1919 Act; (ii) that, the scheme, as sanctioned by the Trust, not being the same as the one which was first notified under the 1919-Act, could not be continued under the provisions of s. 97 of the 1966-Act. and (iii) that, the notification under s. 32(1) of 1966-Act, which was to be equated with a notification under s. 6 of the Land Acquisition Act, 1894, was invalid because it was not published within two years after the commencement of the Land Acquisition (Amendment and Validation) Act, 1967.

Dismissing the appeal,

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HELD: (1) (a) Section 100 of the 1919-Act which deals with validation of acts and proceedings, completely refutes the argument based upon a specious distinction between the appointment of members of the Trust and the constitution of the Trust and upon an unwarranted condition sought to be imposed upon the competence of members of the Trust to act. [5D-E]

(b) A Trust duly incorporated by the terms of a statute cannot be lacking in power or competence to act at all simply because s. 8 meant to notify the commencement of office of the first trustees only under the Act, has not been complied with simultaneously with or soon after the appointment of the first trustees. [5E-G]

(c) The whole object of s. 8 is only to determine the date of commencement of the term of office of the members of the Trust in order to fix the date of its expiry so as to enable fresh appointments to be made in time. Assuming that the Gorakhpur Improvement Trust was first constituted in 1963, there is no provision indicating that the constitution of the Trust was not complete as soon as it was declared by statute and a Chairman and Trustees took charge of their offices by reason of their appointment as trustees. This had been done by notification under s. 4(2). Therefore, the need for a notification under s. 8 had not been felt till the expiry of the term of office of the first trustees drew near. This explains why the subsequent notification which was really a corollary of a notification under s. 4(2) took place so late when the three years' period of proceedings. [10G-H; 11B-C]

(d) Even assuming that the date of the coming into force of the 1966-Act was subsequent to February 21, 1966, absence of a notification under s. 8 could not invalidate any proceeding of the Trust. Even if a notification under s. 8 should have followed soon after the notification under s.

4(2) of the 1919-Act,

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yet, s. 100 prevents any such technical irregularity from invalidating any proceeding of the Trust, including the framing and implementation of the scheme. [6B-D]

(2) The appellant has not shown how any feature of the originally framed scheme, apart from an acquisition by it of a new Hindi appellation, was altered so that it could not be continued under s. 97(3) of the 1966-Act. The argument is based on speculation about the changed character of the two supposedly separate and different schemes. The scheme had been referred to by the same name in so far as the locality to which it related was concerned. The plots involved were admitted to be the same both in the initial and the final notification. [6E-G]

(3 (a) The object of the notification under s. 6 of the Land Acquisition Act is to ensure that the Government is duly satisfied after an enquiry that the land under consideration was really needed for a public purpose and that the declaration was to operate as conclusive evidence to show that this was so. The conclusiveness of this declaration could not be questioned anywhere if the procedure dealing with its making has been observed. [10D-E]

(b) Under s. 4(2) of the Land acquisition (Amendment and Validation) Act, 1967, it is the declaration which has to take place within two years of the expiry of the commencement of the ordinance. If an unreasonable delay between declaration and its notification is shown to exist it may raise a suspicion about the existence of the declaration itself or about the bona fides of acquisition proceedings. [10G-H; 11B- C]

In the instant case neither the existence nor the bona fides of the declaration had been questioned. The appellant had neither asserted nor shown that no declaration was made within the period of time fixed for it. [11C-D]

JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1754 of 1974.

(Appeal by special leave from the judgment and order dated the 9-10-1972 of the Allahabad High Court of Judicature at Allahabad in Civil Misc. Writ No. 2830 of 1970) D. V. Patel, B. P. Singh, for the appellant J. P. Goyal and Shreepal Singh, for respondents 2-3. G. N. Dikshit and O. P. Rana for respondents 1 & 4. The Judgment of the Court was delivered by BEG, J. The appellant before us, by grant of special leave to appeal against the judgment of a Division Bench of the Allahabad High Court, challenges the validity of a- Housing Scheme, first notified on 13th March, 1965, under Section 36 of the U.P. Town Improvement Act No. VIII of 1919 (hereinafter referred to as 'the Act'), and then finally sanctioned, under Section 32(1) of the U.P. Awas Evam Vikas Parishad Adhiniyam (U.P. Act I of 1966) (hereinafter referred to as 'the Adhiniyam'), and published on 3rd May, 1969 in

the U.P. Gazette.

Learned Counsel for the petitioner has invited our attention to the five objections put forward and rejected by the Division Bench to the acquisition for purposes of the scheme. Out of these, he has abandoned two. He confines his objections to three which are as follows:

Firstly, as the notification under section 8 of the Act of 1919, indicating the commencement of the term of the office of the Ist Trustees took place only on 21st February, 1966, after the Act of 1919 had been repealed, the Trustees, who had been appointed by a notification dated 21st March, 1963, under Section 4 of the Act of 1919, could not have framed any scheme because the Trust itself was never properly constituted.

Secondly, even if the first objection be not sustainable, the scheme, as sanctioned by the Trust, not being the same as the one which was first notified under the Act of 1919, could not be continued under the provisions of Section 97 of the Adhiniyam.

Thirdly, the notification made under Section 32(1) of the Adhiniyam of 1966, with regard to the "Rustampur- Tiwaripur Vikas Yojna No. 5", which was to be equated with a notification under Section 6 of the Land Acquisition Act, 1894, was invalid, because it was not published within two years after the commencement of the Land Acquisition (Amendment and Validation) ordinance, 1967, as required by Section 4(2) of the Land Acquisition (Amendment and Cr - Validation) Act of 1967.

With regard to the 1 st objection the relevant provisions placed before us are Sections 4 and 8 of the Act of 1919. They are:

"4.Constitution of Trust.-(1) Trust shall consist of the following Trustees, namely-

(a) a Chairman;

(b) the Chairman of the municipal board;

(c) repealed.

(d) seven other persons in Kanpur and five other persons other places.

(2) The Chairman and the persons referred to in clause

(d) of sub-section (1), shall be appointed by the State Government by notification. (3) The Chairman of the Municipal Board shall be a Trustee ex-officio.

(4) & (5) repealed.

(6) Of the persons referred to in clause (d) of sub-

section (1) not more than one shall be a person in the service of the Government".

8. Commencement of term of office of first Trustees.- (1) The term of office of the first Trustees shall commence on such date as shall be notified in this behalf by the State Government.

(2) A person ceasing to be a member by reason of the expiry of his term of office shall, if otherwise qualified, be eligible for renomination".

Section 1, sub.s. (3) says:

"1(3)This section and section 66 shall come into force at once. The State Government may, by notification / direct that the rest of the Act shall come into operation in the whole or any part of any municipality, and in any area adjacent thereto, on such date as may be specified in such notification".

It is not disputed that the relevant notifications had been issued bringing the whole Act into operation before the notification of 21st March, 1963, with which we are concerned here, was published r showing that the Governor of U.P. was pleased to appoint the District Magistrate of Gorakhpur as the Chairman of the Gorakhpur Improvement Trust and others as Trustees of it.

Chapter II of the Act 1919 dealing with constitution of trusts, begins with Section 3, which reads as follows: -

"3. Creation and incorporation of Trust.-The duty of carrying out the provisions of this Act in any local area shall, subject to the conditions and limitations hereinafter contained, be vested in a board to be called. 'The (name of town) Improvement Trust', hereinafter called 'the Trust', and every such board shall be a body corporate and have perpetual succession and a common seal, and shall by the said name sue and be sued".

We have already set out Section 4 above. Section S deals with resignation of trustees. ' Sections 6 and 7 are also relevant. They read as follows:

"6. Term of office of Chairman.-The term of office of the of the Chairman shall ordinarily be three years, provided that he may be removed from office by the State Government at any time

7. Term of office of other Trustees.-Subject to the fore going provisions of the term of office of every Trustee appointed under clause (d) of sub- section (1) of Section 4 shall be three years".

Section 9 deals with remuneration of the Chairman, Section 10 with removal of trustees, Section 11 with the disabilities of trustees removed under Section 10, and section 12 with the filling up of casual vacancies.

Chapter III deals with proceedings of the trust and its Committees. Chapter IV deals with improvement schemes. Chapter VI deals with acquisition and disposal of land. Chapter VII deals with finance. Chapter VIII with framing of rules, and Chapter IX with procedures and penalties. Chapter X, which is the last chapter, . deals with certain supplementary provisions among which is Section 100 providing as follows:

"100.Validation of acts and proceedings.-(1) No act done or proceeding taken under this Act shall be questioned on the ground merely of-

(a) the existence of any vacancy in, or any defect in the constitution, of the trust or any Committee or

(b) any person having ceased to be a trustee; or

(c) any trustee, or any person associated with the Trust under Section 14 or any other member of a Committee appointed under this Act having voted or taken any part in any proceeding in contravention of Section 117 or

(d) the failure to serve a notice on any person, where no substantial injustice has resulted from such failure or

(e) any omission, defect or irregularity not affecting the merits of the case.

(2) Every meeting of the Trust, the minutes of the proceeding of which have been duly signed as prescribed in clause (g) of sub-section (1) of Section 13, shall be taken to have been duly convened and to be free from all defect and irregularity".

It is not denied that the Improvement Trust of Gorakhpur had been actually working under the above mentioned provisions of the Act of 1919. We think that Section 100 of the Act of 1919, in the context of the whole Act, completely refutes the argument based upon a specious distinction between appointment of members of the trust and the Constitution of the Trust, and upon an unwarranted condition sought to be imposed upon the competence of members of the Trust to act said to be embedded in Section 8 which was, we think never intended to serve such a purpose.

Section 4, dealing with the Constitution of the Trust, indicates that the appointment of the Chairman and members completes the Constitution of the trust. A trust, duly incorporated by the terms of a statute, armed with all the powers vested in it by the provisions, mentioned above, of a statute which has become operative, cannot be lacking in power or competence to act at all simply because Section 8, meant to notify the commencement of office of the first trustees only under the Act, has not been complied with simultaneously with or soon after the appointment of the first

trustees.

Section 8 is the last of the three Sections which deal with duration of terms of offices of the Chairman and the trustees. It is confined to the commencement of the "term" by which is meant the duration of the period of office of the first trustees so that subsequent trustees may properly take over after the period of office of the first trustees terminates. The whole object seemed to be only to determine the date of commencement of their term in order to fix the date of its expiry so as to enable fresh appointments to be made in time. Assuming that the Gorakhpur improvement Trust was first constituted in 1963, there is no provision indicating that the constitution of the trust was not complete as soon as it was declared by statute and a Chairman and trustees took charge of their offices by reason of their appointment as trustees. This had been done by the notification under Section 4(2). Therefore, the need for a notification under Section 8 does not seem to have been felt until the time when the expiry of the fixed term of office of the first trustees drew near. This explains why the subsequent notification, which was really a corollary of a notification under Section 4(2), took place so late when the three years' period of their offices was about to come to an end.

A notification under Section 8 was probably quite unnecessary by reason of Sections 96 and 97 of Adhiniyam of 1966 which repealed U.P. Act No. VIII of 1919 and dissolved the trust "on and from the date on which" the Adhiniyam came into force in an area. However, even assuming that the date of the coming into force of the Adhiniyam, and, therefore, the repeal of the Act for Gorakhpur was subsequent to 21st February, 1966, the absence of a notification under Section 8 could not, in our opinion, invalidate any proceeding of the Trust. It was conceded that a notification under Section 8 could have been combined with the notification under Section 4(2). Even if, strictly speaking, a notification under Section 8 should have followed soon after the notification under Section 4(2) of the Act of 1919, yet, Section 100 prevents any such technical irregularity from invalidating any proceeding of the trust, including the framing and implementation of the Scheme before us.

Coming to the second objection, we find that the only ground upon which it is pressed is that the preliminary notification, of which no copy has been placed before us, was said to contain what is described as "a housing and accommodation scheme", falling under Section 24(g) read with Section 31 of the Act of 1919, whereas, the finally sanctioned scheme, called "Rustampur Tiwaripur Vikas Yojna No. 5 KP". which is translated by learned Counsel for the appellant as a "Land Development Scheme" is alleged to fall under Section 24(f) read with Section 30 of the Act of 1919. This argument seems based on mere speculation about the changed character of the two supposedly separate and different schemes. The scheme had been referred to by the same name in so far as locality, to which the scheme relates, is concerned. The plots involved are admitted to be the same both in the initial and final notifications. It is immaterial that Section 24 of the Act of 1919 lists eight types of Schemes. We have not been shown how any feature of the originally framed scheme, apart from an acquisition by it of a new Hindi appellation, was altered so that it could not be continued under Section 97(3) of the Adhiniyam of 1966 which lays down:

"97(3) Every scheme and all proceedings relating thereto under the U.P. Town Improvement Act, 1919 (U.P. Act VIII of 1919), including proceedings for the levy, assessment or recovery of betterment tax, pending on the appointed day shall stand

transferred to the Board, which shall proceed further with the scheme or with the execution thereof or with the levy, assessment or recovery of betterment fee in connection therewith, from, the stage at which it was transferred to it, in accordance with the corresponding provisions of this Act:

Provided that the Board may, if it thinks fit, recall any step or proceeding already gone through under the said Act and take that step or proceeding afresh under the corresponding provision of this Act".

The third objection appears, at first sight, to be little more substantial than the first two, but, on closer examination, we find it to be also untenable for reasons we now proceed to give.

We have already noticed that the dates of notifications under Section 36 of the Act of 1919, and under Section 32(1) of the Adhiniyam of 1966 were 13th March, 1965, and 3rd May, 1969, respectively.

Section 36 of the Act of 1919 provided:

"36. Preparation, publication and transmission of notice as to improvement schemes, and supply of documents to applicants.-(1) When any improvement scheme has been framed, the Trust shall prepare a notice, stating:-

(a) the fact that the scheme has been framed,

(b) the boundaries of the area comprised in the scheme, and

(c) the place at which particulars of the scheme, a map of the area comprised in the scheme, and a statement of the land which it is proposed to acquire, may be seen at reasonable hours (2) The Trust shall:-

(a) cause the said notice to be published weekly for three consecutive weeks in the official Gazette and in a local newspaper- or newspapers (if any) with a statement of the period within which objections will be received, and,

(b) send a copy of the notice to the Chairman of the municipal board.

(3) The Chairman shall cause copies of all documents referred to in clause (c) of sub-

section (1) to be delivered to any applicant on payment of such fees as may be prescribed by rule under Section 73".

Section 56 of the Act of 1919 reads:

"56. Power to acquire land under the Land Acquisition Act, 1894,-The Trust may, with the previous sanction of the State Government, acquire land under the provisions of the Land Acquisition Act, 1894, as modified by the provisions of this Act, for carrying out any of the purposes of this Act".

2-L390SCI/76 Section 58 of the Act indicates that the modifications made by the Act, subject to which the procedure of the Land Acquisition Act of 1894 is to be applied to a scheme under the Act, are given in paragraph 2 of the schedule to the Act which lays down:

"2. Notification under Section 4 and declaration under Section 6 to be replaced by notifications under Sections 36 and 42 of this Act.-

(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 official 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 State 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".

Section 97 of the Adhiniyam, already set out above, applies the corresponding provisions of the Adhiniyam of 1966 to proceedings begun under the Act of 1919.

It is clear, from the provisions set out above, that the Act and the Adhiniyam apply Sections 4 and 6 of the Land Acquisition Act, 1894, to the acquisition for the scheme before us in so far as their effects are concerned. It is arguable that, if the effectiveness of the notifications t under Sections 4 and 6 of the Land Acquisition Act is cut down or modified or amended in any way, subsequent to the date of the passing of the Adhiniyam, the amendments may not apply, but the effect of the notifications, where the Act and the Adhiniyam were enacted, would be all that need be considered. It is true that the notices are procedural matters, but they affect substantive rights as well. The date of notification under Section 4 affects the amount of compensation which may be determined and a notification under Section 6 operates as conclusive evidence that the land is needed for a public purpose and enables the appropriate Government to proceed to acquire the land. Nevertheless, an acquisition under Section 56 of the repealed Act as well as under Section 55 of the Adhiniyam of 1966 takes place expressly "under" the Land Acquisition Act of 1894. This may well mean that, if the machinery of acquisition is modified in some respect by an amendment, the amended machinery alone can apply. The High Court had not decided this question. We also think that it is not necessary for us to decide this question as it has not been argued, on behalf of the respondent, that the amendment of the Land Acquisition Act, 1967, would not apply here. We, therefore, proceed on the assumption that the Land Acquisition Act, as amended in 1967, was applicable here.

Section 4(2) of the Land Acquisition (Amendment and Validation) Act 1967, lays down:

"4(2) Notwithstanding anything contained in clause

(b) of sub-section (1), no declaration under section 6 of the principal Act in respect of any land which has been notified before the commencement of the Land Acquisition (Amendment & Validation) ordinance, 1967, sub-section (1) of Section 4 of the Principal Act, shall be made after expiry of two years from the commencement of the said ordinance".

In the case before us, the first notification under Section 36 of the Act, having been equated with the preliminary notification under Section 4 of the Land Acquisition Act and published on 13th March, 1965, the "declaration" under Section 6 had to be made within two years of the coming into force of the ordinance on 20th January, 1967. Neither the declaration nor the actual notification have been placed before us. Nevertheless, the contention on behalf of the appellant is that, as the notification under Section 32(1.) of the Adhiniyam took place on 3rd May, 1969, no declaration under Section 6 of the Land Acquisition Act could be made on this date, the last date for such declaration being 19th January, 1969. No doubt both sides are agreed that, as the judgment of the High Court reveals, the date of the notification under Section 32(1) of the Adhiniyam is 3rd May, 1969. We, however, think that the appellant's contention before us ignores the very apparent distinction made in the provisions of Section 6 of the Land Acquisition Act between a declaration and its notification.

Section 6 of the Land Acquisition Act reads as follows:

"6(1) Subject to the provisions of Part VII of this Act, when the appropriate Government is satisfied, after considering the report, if any, made under Section SA, sub-section (2), that any particular land is needed for a public purpose, or for a Company, a declaration shall be made to that effect under the signature of a Secretary to such Government or of some officer duly authorized to certify its orders, and different declarations may be made from time to time . in respect of different parcels of any land covered by the same notification under Section 4, sub-section (1), irrespective of whether one report or different reports has or have been made (wherever required) under Section SA, sub-section (2):

Provided that no declaration in respect of any particular land covered by a notification under Section 4, sub-section (1), published after the commencement of the Land Acquisition (Amendment and Validation) ordinance, 1967, shall be made after the expiry of three years from the date of such publication. Provided further that no such declaration shall be made unless the compensation to be awarded for such property is to be paid by a Company, or wholly or partly out of public revenues or some fund controlled or managed by a local authority.

(2) Every declaration shall be published in the official Gazette, and shall state the district or other territorial division in which the land is situate, the purpose for which

it is needed, its approximate area, and, where a plan shall have been made of the land, the place where such plan may be inspected. (3) The said declaration shall be conclusive evidence that the land is needed for a public purpose or for a Company, as the case may be; and, after making such declaration, the appropriate Government may acquire the land in manner hereinafter appearing"

It is clear from the provisions set out above that the object of the notification under Section 6 is to ensure that the Government is duly satisfied, after an enquiry at which parties concerned are heard, that the land under consideration is really needed for a public purpose and that the declaration is to operate as conclusive evidence to show that this is so. The conclusiveness of this declaration cannot be questioned anywhere if the procedure dealing with its making has been observed. The notification which takes place under Section 6(2), set out above, follows and serves only as evidence of the declaration. That the declaration mentioned in Section 6(1), set out above, differs from its notification is shown by the fact that it has to be signed by a Secretary or other officer duly authorized. The declaration is in the form of an order. The notification is its publication and proof of its existence. It has been shown, in the case before us that the deemed notification under Section 6 took place about three and a half months after the expiry of two years from the commencement of the ordinance of 1967. But, it is not argue on behalf of the appellant that the declaration under Section 6 was similarly delayed. Presumably, it was within time.

A look at the amendment introduced by the Section 4(2) of the Land Acquisition (Amendment and Validation) Act, 1967, shows that it is the declaration which has to take place within two years of the expiry of the commencement of the ordinance which came into force on 20th January, 1967. In fact, Section 4(2) of the Amendment Act of 1967, set out above, itself makes a distinction between a "declaration" under Section 6 and its "notification" under Section 4 of the principal Act. It does not say that no notification under Section 6 of the principal Act can take place beyond the time fixed. The prohibition is confined to declarations made beyond the specified period. If the case of the appellant could be that no declaration was made within the prescribed time, it was his duty to prove it. He has not discharged that onus.

As indicated by the Division Bench of the Allahabad High Court, the amendment of 1967, was the result of a decision of this Court in the State of Madhya Pradesh & Ors. v. Vishnu Prasad Sharma & Ors.(1) holding successive notifications, under Section 6, with excessive intervening delay between a notification under Section 4(2) and a declaration under Section 6, keeping the owner or other person entitled to compensation in suspense all the time, to be illegal. It may be that, if an unreasonable delay between a declaration and its notification is shown to exist, it may raise a suspicion about the existence of the declaration itself or about the bona fides of acquisition proceedings. This, however, is not the position in the case before us. Neither the existence nor the bona fides of the declaration have been questioned. It has not been either asserted or shown, as already mentioned, that no declaration was made with in the period of time fixed for it. We, therefore, reject the last objection also.

Consequently, we dismiss this appeal, but, in the circumstances of the case, we make no order as to costs.

P.B.R.

Appeal dismissed.

(1) [1966] 3 S.C.R. 557.