

**Court No.39**

**Case :-** WRIT - C No. - 36796 of 2015

**Petitioner :-** U.P. Avas Evam Vikas Parishad

**Respondent :-** State Of U.P. And 2 Ors.

**Counsel for Petitioner :-** Navaneet Chandra Tripathi

**Counsel for Respondent :-** C.S.C.,L.K. Singh, H.N.Singh, Senior Advocate.

**Hon'ble Dilip Gupta, J.**

**Hon'ble Vinod Kumar Misra, J.**

The U.P. Avas Evam Vikas Parishad<sup>1</sup> has filed this petition to assail the order dated 4 March 2015 passed by the Special Land Acquisition Officer (Avas), Kanpur Nagar on the application filed by the late father of Santosh Kumar who has been impleaded as respondent no.3 in this petition. The application had been filed under Section 28-A of the Land Acquisition Act, 1894<sup>2</sup>.

It transpires from the records of the writ petition that large tract of land was acquired by the Parishad for a scheme known as 'Kanpur Bhumi Vikas Evam Grihsthan Yojna Sankhya-1 including land situated in Gata Nos. 55, 82, 88, 90, 92 and 95 of village Mohisinpur, Tehsil and District Kanpur Nagar admeasuring 5-1-0 Bighas belonging to the father of Santosh Kumar. The notification under section 28 of the Uttar Pradesh Avas Evam Vikas Parishad Adhiniyam, 1965<sup>3</sup> was issued on 17 February 1973 and the notification under section 32 of the Parishad Act was issued on 27 February 1980. The award was made by the Special Land Acquisition Officer on 31 March 1986. It is stated that the father of the

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1 the Parishad

2 the Acquisition Act

3 the Parishad Act

respondent no.3 did not file any application under Section 18 of the Acquisition Act. However, certain other persons filed reference applications under Section 18 of the Acquisition Act. One such reference application which was registered as Land Acquisition Reference Case No.49/70 of 1992 (Rameshwar & others versus State of U.P. & Another) was decided by the Reference Court on 20 May 2000. The Parishad assailed the award of the Reference Court by filing First Appeal No.964 of 2000 in the High Court, which was ultimately dismissed on 6 July 2012.

It also transpires from the records of the writ petition that after the award was made by the Reference Court on 20 May 2000 in LAR No.49/70 of 1992 (Rameshwar & others Vs. State of U.P. & Anr.), the father of respondent no.3 filed an application under section 28-A of the Acquisition Act on 11 August 2000 for re-determination of the compensation. This application has now been decided by the Special Land Acquisition Officer by order dated 4 March 2015 which has been impugned in this petition.

The submission of Shri Navaneet Chandra Tripathi, learned counsel appearing for the Parishad is that Section 28-A of the Acquisition Act would not apply to acquisitions made under the Parishad Act and, therefore, the application filed by the father of respondent no.3 was not maintainable. It is, therefore, his submission that the order passed by the Special Land Acquisition Officer is without jurisdiction and is liable to be set aside. In support of his contention, learned counsel for the petitioner

has placed reliance upon an interim order dated 1 April 2010 passed by the Supreme Court in Special Leave to Appeal (Civil) No.7526/2010 by which the order dated 10 December 2009 passed by the High Court in Writ Petition No.2157 of 1999 was stayed.

Shri H.N. Singh, learned Senior Counsel assisted by Shri L.K. Singh for the respondents has stated that it is not necessary to file a counter affidavit and the writ petition can be decided at this stage. Learned Senior Counsel has, however, submitted that Section 28-A of the Acquisition Act would be applicable to all acquisitions made under the Parishad Act since it relates to payment of compensation and in support of his contention, learned Senior Counsel has placed reliance upon the decisions of the Supreme Court in **U.P. Avas Evam Vikas Parishad Vs. Jainul Islam & Anr.**<sup>4</sup> and **Girnar Traders (3) Vs. State of Maharashtra & Ors.**<sup>5</sup>

We have considered the submissions advanced by the learned counsel for the parties.

In order to appreciate the contentions advanced by learned counsel for the parties, it would be appropriate to refer to the provisions of the Acquisition Act and the Parishad Act as also the provisions of the Land Acquisition (Amendment) Act, 1984<sup>6</sup>. Section 28 of the Parishad Act refers to notice of housing and improvement scheme, while Section 32 deals with commencement of scheme. These two Sections 28 and 32

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4 AIR 1998 SC 1028

5 (2011) 3 SCC 1

6 1984 Act

respectively have the effect of a notification issued under Section 4(1) and the declaration under Section 6 of the Acquisition Act. Section 55 of the Parishad Act deals with power to acquire land and is as follows:

**“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. 1 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 land under the Land Acquisition Act, 1894 (Act No.1 of 1894).”

The Schedule to the Parishad Act deals with the modifications in the Acquisition Act as amended in its application to the State of Uttar Pradesh.

Act No. 68 of 1984 amended the Acquisition Act and the following amendments have been made :

“(i) Sub-section (1-A) was inserted in Section 23 whereby an additional amount calculated at the rate of 12% per annum on the market value of land as determined under sub- section (1) of Section 23 has to be awarded by the Court for the period commencing on and from the date of the publication of notification under Section 4(1) in respect of such land to the date of the award of the Collector or to the date of taking possession of land, whichever is earlier.

(ii) The rate of solatium payable under Section 23(2) had been enhanced from 15% to 30%.

(iii) The rate of interest payable of the excess amount of compensation under Section 28 had been enhanced from 6% to 9% per annum when the excess amount is paid within one year of the date on which the

Collector took possession of the land and where the excess amount is paid after the expiry of the period of one year interest would be payable @ 15% per annum from the date of expiry of the period of one year.

(iv) .....

Section 28-A of the Acquisition Act was also inserted by Act No.68 of 1984 for re-determination of the amount of compensation on the basis of the award of the Court and provides that where in an award under Part-III, the Court allows to the applicant any amount of compensation in excess of the amount awarded by the Collector under Section 11, the persons interested in all the other land covered by the same notification under Section 4, sub-section (1) and who are also aggrieved by the award of the Collector, may, notwithstanding that they had not made an application to the Collector under Section 18, by written application to the Collector within three months from the date of the award of the Court require that the amount of compensation payable to them may be re-determined on the basis of the amount of compensation awarded by the Court.

Since there was no corresponding amendment in the Parishad Act, a question arose where the benefit of the amendments introduced by Act No.68 of 1984 can be extended to the land owners whose land had acquired for the purpose of the Adhinyam on the basis of the provisions of the Acquisition Act as modified by the Adhinyam.

This issue was examined at length by the Supreme Court in **Jainul Islam** (supra) and it was held that while incorporating the provisions of the Acquisition Act in the Adhinyam, the intention of the Legislature

was that amendments in the Acquisition Act relating to **determination and payment of compensation** would be applicable to acquisitions of land for the purpose of the Adhinyam. This would mean that the amendments introduced in the Acquisition Act by 1984 Act relating to determination and payment of compensation would be applicable to acquisitions of land for the purposes of the Adhinyam under Section 55 of the Parishad Act. The observations of the Supreme Court are reproduced below :

“31. Since the present case involves acquisition of land under the provisions of the L.A. Act as applicable under the Adhinyam it is fully covered by the law laid down by this Court in Nagpur Improvement Trust (supra). Keeping in view the principles laid down in the said decisions of this Court, it has to be held that if the provisions of the Adhinyam are so construed as to mean that the provisions of the L.A. Act, as they stood on the date of enhancement of the Adhinyam, would be applicable to acquisition of land for the purpose of the Adhinyam and that the amendments introduced in the L.A. Act by the 1984 Act relating to determination and payment of compensation are not applicable, the consequence would be that the provisions of the L.A. Act, as applicable under the Adhinyam, would suffer from the vice of arbitrary and hostile discrimination. Such a consequence would be avoided if the provisions of the Adhinyam are construed to mean that the provisions of the L.A. Act, as amended by the 1984 Act, relating to determination and payment of compensation would apply to acquisition of land for the purposes of Adhinyam. There is nothing in the Adhinyam which precludes adopting the latter construction. On the other hand, the provisions of the Adhinyam show that the intention of the Legislature, while enacting the Adhinyam, was to confer the benefit of solatium @ 15% by modifying Section 23(2) in the Schedule, which benefit was not available under the provisions of the L.A. Act as it was applicable in the State of Uttar Pradesh at the time of enactment of the Adhinyam. **It cannot, therefore, be said that the intention of the Legislature, in**

**enacting the Adhinyam, was to deny to the landowners the benefits relating to determination and payment of compensation which would be available to them under any amendment made in the L.A. Act after the enactment of the 'Adhinyam'. We are, therefore, of the opinion that on a proper construction of Section 55 of the Adhinyam it must be held that while incorporating the provisions of the L.A Act in the Adhinyam the intention of the Legislature was that amendments in the L.A. Act relating to determination and payment of compensation would be applicable to acquisition of lands for the purposes of the Adhinyam. This means that the amendments introduced in the L.A. Act by the 1984 Act relating to determination and payment of compensation, viz.. Section 23 (1-A) and Section 23(2) and 28 as amended by the 1984 Act would be applicable to acquisitions for the purposes of the Adhinyam under Section 55 of the Adhinyam.”**

(emphasis supplied)

This decision was subsequently followed by the Supreme Court in **Nagpur Improvement Trust Vs. Vasantrao & Ors.**<sup>7</sup>, and it was observed :

“48. So far as the U.P. Act is concerned the judgment in U.P. Avas Evam Vikas Parishad vs. Jainul Islam (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.”

In **Savitri Cairae Vs. U.P. Avas Evam Vikas Parishad & Anr.**<sup>8</sup>,

it was sought to be contended by learned counsel for the Parishad that the decision of the Supreme Court in **Jainul Islam** (supra) required re-consideration as the Parishad Act was enacted by the State Legislature whereas the Acquisition Act was enacted by the Parliament and, therefore, the provisions of the Parishad Act could not be said to be *ultra-vires* Article 14 of the Constitution. Repelling this contention, the Supreme Court observed as follows:

“13. 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.*, a seven 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 a 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."

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 Adhinyam but the procedures laid down therefore

under the Land Acquisition Act are to be followed and in both the cases, the acquiring authority is the State.

15. 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.

16. The said question again came up for consideration again before a three 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. ....”

The Constitution Bench of the Supreme Court in **Girnar Traders (3)** (supra), while examining the extent of application of the amended provisions of Act No.68 of 1984 to the Maharashtra Regional and Town Planning Act, 1966, observed that the provisions introduced by Act No.68 of 1984 to the extent that they provide for acquisition of land, payment of compensation and recourse to legal remedies can be read in the provisions of the MRTP Act but not the provisions relating to different time frames and consequences of default thereof including lapsing of acquisition proceedings. The relevant paragraphs are :

“117. In Gauri Shankar Gaur Vs. State of U.P. (1994) 1 SCC 92, a Bench of two Judges of this Court took divergent view while dealing with the challenge to the validity of Section 55 read with the Schedule to the U.P. Avas Evam Vikas Parishad Adhiniyam, 1965 which provided that the provisions of the Land Acquisition Act would apply in the matter of acquisition of land for the purpose of the Adhiniyam. ....”

119. The above dissent led to reference of the legal issue to a three-Judge Bench in U.P. Avas Evam Vikas Parishad vs. Jainpur Islam (1998) 2 Scc 467 where the Court took the view that the acquisition effected under the provisions of the U.P. Avas Evam Vikas Parishad Adhiniyam, 1965, where Section 55 read with the

Schedule of that Act adopted the provisions of the Land Acquisition Act, such adoption was held to be legislation by reference and, therefore, the landowners would be entitled to the benefits of Section 23(1-A), 23(2) and 28 as introduced by Central Act 68 of 1984 as otherwise it would suffer from the vice of arbitrariness and hostile discrimination. This Court while dealing with the provision of Section 55 of the Adhinyam held that the provisions of the Land Acquisition Act as amended by Central Act 68 of 1984, relating to determination and payment of compensation, would be applicable to acquisition of land for the purposes of the Adhinyam.”

The Supreme Court then observed that there was no reason to differ with the view earlier taken by the Supreme Court in **Jainul Islam** (supra) and ultimately in paragraph 191 answered the question referred to the larger Bench in the following manner:

“For the reasons stated in this judgment, we hold that the MRTP Act is a self-contained code. **Further, we hold that provisions introduced in the Land Acquisition Act, 1894 by Central Act 68 of 1984, limited to the extent of acquisition of land, payment of compensation and recourse to legal remedies provided under the said Act, can be read into an acquisition controlled by the provisions of Chapter VII of the MRTP Act** but with a specific exception that the provisions of the Land Acquisition Act insofar as they provide different time frames and consequences of default thereof including lapsing of acquisition proceedings cannot be read into the MRTP Act. Section 11A of the Land Acquisition Act being one of such provisions cannot be applied to the acquisitions under Chapter VII of the MRTP Act.”

(emphasis supplied)

It has, however, been urged by learned counsel for the Parishad that in all the aforesaid decisions of the Supreme Court, there is no mention of Section 28-A of the Acquisition Act and, therefore, it cannot

be said that the provisions of Section 28-A of the Acquisition Act, as inserted by Act No.68 of 1984, would be applicable to the acquisition of land for the purpose of the Adhinyam.

We do not find any merit in this contention of learned counsel for the Parishad. Section 28-A also relates to determination and payment of compensation. It had been observed by the Supreme Court in **Jainul Islam** (supra) and **Nagpur Improvement Trust** (supra) that the amendments introduced in the Acquisition Act by Act No.68 of 1984 relating to determination and payment of compensation would be applicable to acquisitions of land for the purpose of the Adhinyam under Section 55 of the Parishad Act. It is true that reference was made to Section 23(1-A), Section 23(2) and Section 28 by way of illustration but it cannot be urged that Section 28-A would not be applicable to the acquisition of land for the purpose of the Adhinyam because it also relates to determination and payment of compensation.

It also needs to be noticed that in **U.P. Avas Evam Vikas Parishad Vs. Smt. Premwati & Ors.**<sup>9</sup>, it was asserted by learned counsel for the Parishad that the provisions of Section 28-A of the Acquisition Act will not be applicable to the acquisitions made under the Parishad Act. This contention was rejected in view of the decision of the Supreme Court in **Jainul Islam** (supra). The Parishad filed Petition for Special Leave to Appeal (Civil) No.34392 of 2012 against the judgment dated 17 July 2012 passed in First Appeal No.222 of 2009. Initially, the Supreme

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<sup>9</sup> First Appeal No.222 of 2009, decided on 17 July 2012

Court passed an order on 26 November 2012 that there shall be stay of the direction of the High Court as regards payment of compensation under Section 28-A of the Acquisition Act, but the Special Leave to Appeal (Civil) was ultimately dismissed by the Supreme Court on 15 April 2015. In fact, as many as 15 other Special Leave to Appeals (Civil) bearing Nos.34420 of 2012, 34603 of 2012, 34753 of 2012, 34763 of 2012, 3780 of 2012, 34787 of 2012, 34935 of 2012, 34936 of 2012, 20739 of 2013, 20741 of 2013, 20744 of 2013, 20745 of 2013, 20746 of 2013, 1031 of 2014 and 1032 of 2014 dealing with the same issues were also dismissed by the Supreme Court on 15 April 2015.

Thus, the provisions relating to payment of compensation and legal remedies provided under Act No.68 of 1984 would apply to the acquisitions for the purpose of the Adhinyam and Section 28-A being one of them would be applicable. The contention of learned counsel for the Parishad that the application was not maintainable cannot, therefore, be accepted.

However, one important aspect needs to be examined. Section 28-A of the Acquisition Act requires re-determination of the compensation. For this purpose, the Special Land Acquisition Officer has to determine whether the land in respect of which the application under Section 28-A of the Acquisition Act has been filed is similarly situated to the land involved in the award of the Reference Court and to do that, the Special Land Acquisition Officer has to provide adequate opportunity to the parties to lead evidence. In the instant case, the application filed by the

father of respondent no.3 was not even supplied to the Parishad though a request was made by the Parishad as it is clear from the application dated 19 May 2014 which has been annexed as Annexure-4 to the writ petition.

Learned Senior Counsel appearing for respondent no.3 does not dispute this petition but has submitted that the Parishad on its own could have led evidence before the Special Land Acquisition Officer. Though it is correct from a perusal of the impugned order passed by the Special Land Acquisition that the Parishad had contended that the provisions of Section 28-A of the Acquisition Act would not be applicable, but for the factual aspect to be determined a copy of the application filed by the father of respondent no.3 was required to be supplied to the Parishad by the Special Land Acquisition Officer. No finding has also been recorded by the Special Land Acquisition Officer that the land regarding which enhancement of compensation was claimed in the application filed under section 28-A of the Acquisition Act was similarly situated as the land covered by the earlier award of the Reference Court.

It would, therefore, be appropriate for the Court to remit the matter to the Special Land Acquisition Officer to enable the parties to lead evidence so that the Special Land Acquisition Officer can determine whether the land involved in the application filed under section 28-A of the Acquisition Act is similarly situated to the land involved in the award of the Reference Court. The matter is, accordingly, remitted and such an exercise shall be conducted by the Special Land Acquisition Officer expeditiously and not later than three months from the date a certified

copy of this order is filed by either of the parties before the Special Land Acquisition Officer.

It is made clear that this Court has not accepted the contention of the learned counsel of the Parishad that the provisions of Section 28-A of the Acquisition Act would not be applicable. The finding recorded in the impugned order dated 4 March 2015 that the provisions of section 28-A of the Acquisition Act would be applicable is, therefore, maintained.

The impugned order dated 4 March 2015 passed by the Special Land Acquisition Officer (Avas), Kanpur Nagar is set aside only to the extent indicated above and the writ petition is, accordingly, allowed to that extent only.

**Date:13.07.2015**  
**SK/SFH**

**(Dilip Gupta, J.)**

**(Vinod Kumar Misra, J.)**