

1962

December 7.

PATNA IMPROVEMENT TRUST

v.

SMT. LAKSHMI DEVI & OTHERS

(JAFER IMAM, J. L. KAPUR, K. SUBBA RAO and J. R. MUDHOLKAR, JJ.)

Land Acquisition—Acquisition for Trust—Notification under ss. 4 and 6 after Bihar Act came into force—Validity—If repealed by Bihar Town Planning and Improvement Trust Act, 1951 (35 of 1951)—Words “has been previously made”—Construction of—ss. 33, 46, 71—Land Acquisition Act, 1894 (1 of 1894), ss. 4, 6, 50.

A common question of law arose in these appeals namely, whether the Bihar Town Planning and Improvement Trust Act, 1951 (Act 35 1951), replaced the Land Acquisition Act (1 of 1894) in the matter of acquisition of land for the said Trust and whether the notifications issued by the Government of Bihar under ss. 4 and 6 of the Land Acquisition Act were valid, after the Bihar Act had come into force. The High Court held the notifications of the State Government *ultra vires* and illegal. On the principle of *generalia specialibus non derogant* and also that if a statute directs a thing to be done in a certain way that thing shall not, even if there be no negative words be done in any other way.

Held, (per Imam, Kapur and Mudholkar, JJ.), that s.71 of the Bihar Act which modified the Land Acquisition Act itself contemplates the machinery of the Land Acquisition Act as modified even for the purpose of acquiring land for the Trust. It does not exclude the Land Acquisition Act; on the contrary it makes it applicable but subject to its modifications and exceptions. The first relevant modification is by sub-cl. (1) of clause (2) of the schedule. There the first notice under s. 46 of the Bihar Act is substituted for and has the same effect as a notification under s. 4 (1) of the Land Acquisition Act but that is subject to an important exception and that exception is a notification under s. 4 (1) of the Land Acquisition Act or a declaration under s. 6 of that Act which “has been previously made and is in force”. The words “has been previously made” did not merely connote the issuing of a notification before the Bihar Act was passed, but include all notifications made prior or anterior to the first publication of a notice of an improvement scheme under s. 46 of the Bihar Act.

Mercer Henderson's Trustees v. Dunferuline District Committee, 37 Sc. L. R. 119, referred to.

Held, further, that the power of the State Government to acquire land for the Trust was not taken away by the Bihar Act was further shown by s. 33 of that Act which deals with the preparation of a Master Plan by the Trust, which has to designate the land subject to compulsory acquisition by the various authorities mentioned therein including the State Government.

Held, also, that s. 50 (1) of the Land Acquisition Act would be equally available for being put into force for the purpose of a Trust, which shows that the intention of the legislature was not to exclude the functions of the Land Acquisition Act such as ss. 4, 6, 50 etc. in the matter of acquisition of land for the purpose of a trust.

Per, Subba Rao, J. Under the Act, the Trust was authorised to implement the improvement schemes in a particular way and for the purposes of implementing them to acquire land in a prescribed manner. If that be so, the Trust was bound to implement the scheme in the manner prescribed and could not resort to any other method. The broad scheme of the Act also supports the conclusion that the Trust could only implement the scheme involving acquisition of land in the manner provided by the Act, that is to say in accordance with the land acquisition provisions incorporated in the Act by reference and therefore the two principles noticed by the High Court were apposite.

Secretary of State v. Hindustan Co-operative Insurance Society Ltd. A. I. R. 1931 P. C. 149 and *Ex-Parte Stephens*, (1876) 3 Ch. D. 659, relied on.

The saving of notification issued under s. 4 or s. 6 of the Land Acquisition Act in para. 2 (1) of the schedule of the Act applies to such notifications issued before or after passing of the Act, but prior to the issue of the first publication or notice of implementation of the scheme under s. 46 of the Act.

CIVIL APPELLATE JURISDICTION : Civil Appeals
Nos. 683 to 686 of 1962.

Appeal by special leave from the judgment and order dated January 5, 1962, of the Patna High Court in Miscellaneous Judicial Cases Nos. 335, 433, 434 and 450 of 1961.

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Basudeo Prasad, Sushil Kumar Jha, Yogeswar Prasad and U. P. Singh, for respondent No. 1.

1962. December 7. The Judgment of Imam, Kapur and Mudholkar, JJ. was delivered by Kapur, J. Subba Ras, J., delivered a separate Judgment.

Kapur, J.

KAPUR, J.—In these appeals by special leave against the judgment and order of the High Court of Patna a common question of law arose as to the interpretation of the provisions relating to acquisition under the Bihar Town Planning & Improvement Trust Act 1951, Act 35 of 1951, hereinafter called the "Bihar Act" and whether the notifications issued by the State Government under s. 4 of the Land Acquisition Act were valid. The appellant in all the appeals is the Patna Improvement Trust but in all the four appeals the respondents are different persons.

On January 19, 1961, the Government of Bihar issued a notification under s. 4 of the Land Acquisition Act of 1894 proposing to acquire an area of 407.85 acres of land in the city of Patna at the expense of the Patna Improvement Trust for a public purpose viz., for development of residential neighbourhood, to provide for housing facilities for various income groups and to facilitate the planned growth of the city of Patna. By another similar notification of the same date the State of Bihar proposed to acquire 54.08 acres of land. The respondents challenged the legality of the notices under s. 4 of the Land Acquisition Act by their respective applications for writs under Art. 226 of the Constitution. These notifications were quashed by a writ in the nature

of *certiorari* by the High Court of Patna and against that judgment and order the Patna Improvement Trust has brought these appeals by special leave.

In order to determine the legality of the notifications in dispute it is necessary to examine the various provisions of the Bihar Act. Chapter II of that Act provides for the constitution of Improvement Trust and other matters connected therewith and s. 3 therein vests in the Improvement Trust the duty of carrying out the provisions of the Bihar Act in any local area. Chapter III deals with improvement schemes. Section 46 in that chapter provides for the preparation, publication and transmission of notices as to improvement schemes. Under that section when an improvement scheme has been framed the trust is required to prepare a notice stating the framing of the scheme, the boundaries of the areas comprised in the scheme and certain other particulars in regard to land which it is proposed to acquire and that notice has to be published in the manner therein provided. Under s. 48, within 30 days following the publication of the notice under s. 46 the Trust has to serve a notice on various persons mentioned therein including persons whose land is proposed to be acquired. Such notice shall require any person to whom a notice is issued if he objects to the acquisition to state his reasons within sixty days. By s. 71 of the Bihar Act for the purpose of acquiring land for the Trust under the Land Acquisition Act certain provisions of the Land Acquisition Act have been modified. That section reads :

s. 71. *“Modification of the Land Acquisition Act 1894.*

For the purpose of acquiring land for the Trust under the Land Acquisition Act, 1894 (1 of 1894)—

- (a) the said Act shall be subject to the modifications specified in the Schedule.”

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The Schedule referred to in s. 71 (a) sets out the modifications made in the Land Acquisition Act and we shall only refer to those which are relevant for the purposes of this case. Clause 2 (1) provides :

- C. 2 (1) "The first publication of a notice of an improvement scheme under section 46 of the Bihar Town Planning and Improvement Trust Act, 1951 (Bihar Act XXXV of 1951) 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 notification under sub-section (1) of section 4 or a declaration under section 6 of the said Act has been previously made and is in force".
- (2) "Proceedings under section 48 and sub-section (1) of section 50 of the Bihar Town Planning and Improvement Trust Act, 1951, (Bihar Act XXXV of 1951) shall be substituted for and have the same effect as proceedings under section 5-A of the said Act."
- (3) "Subject to the provisions of paragraphs 6 and 7 of this Schedule, the issue of a notice under clause (c) of sub-section (3) of section 39 of the Bihar Town Planning and Improvement Trust Act, 1951 (Bihar Act XXXV of 1951) in the case of land proposed to be acquired in pursuance of that clause, and in any other case the publication of a notification under section 52 of that Act shall be substituted for and have the same effect as a declaration under section 6 of the said Act, except where a declaration under the last mentioned

section has been previously made and is in force.”

Clause 2 (2) provides that proceedings under s. 48 and s. 50 (1) of the Bihar Act shall be substituted for and have the same effect as proceedings under s. 5A of that Act. Clause 2 (3) makes a notice under cl. (C) of sub-s. (3) of s. 39 of the Bihar Act a substitute for s. 6 of the Land Acquisition Act in the case of lands proposed to be acquired under that section and in any other case publication of a notice under s. 52 to be such a substitute. By other clauses in the Schedule certain additional sections are deemed to have been added to the Land Acquisition Act.

The argument on behalf of the respondents in the High Court was, as it is in this Court, that if land is sought to be acquired for the purpose of the Patna Improvement Trust then it can be acquired in accordance with the provisions of the Bihar Act and not under the provisions of the Land Acquisition Act because the former Act completely replaces the Land Acquisition Act in regard to the acquisition of land for the purpose of the Improvement Trust. It was also argued before us that the purpose of the Bihar Act was to provide a complete code for acquisition of land for the purpose of the Trust and that the Bihar Act and the Land Acquisition Act were inconsistent Acts and could not operate in the same field. The High Court decided the petition on the principle, *generalia specialibus non derogant* and because both the Bihar Act and the Land Acquisition Act were concerned with acquisition of land, the former being a special Act relating to acquisitions for the purpose of Improvement Trusts, it applied to the exclusion of the latter Act which was an Act dealing with acquisition of lands in general. Therefore the State Government had no authority to take steps for acquisition of land for the purpose of the Improvement Trust under the general provisions of the Land Acquisition Act

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after the Bihar Act had come into force and the Improvement Trust had been constituted, and consequently the notifications of the State Government were *ultra vires* and illegal. It also held that the Improvement Trust was bound to follow the procedure expressly laid down in the Bihar Act for the object of carrying out its duties and it was not open to it to adopt any other machinery for the carrying out of those duties, the principle being that if a statute directs a statutory authority to exercise its power in a particular manner it must be exercised only in that manner and none other. The High Court also held that as under the Bihar Act the Improvement Trust is entitled to carry out its duties for which it has been constituted it cannot carry out development or expansion without preparing a matter plan under s. 33 of the Act or without following the procedure under s. 42A of the Act, this last section having been introduced into the Bihar Act by an Amending Act of 1956.

It is not necessary to go into the argument of inconsistency between the Bihar Act and the Land Acquisition Act or the special Act excluding the general because it appears to us that the various provisions of the Bihar Act themselves afford the key to the solution of the problem before us which is one of construction. Section 71 of the Bihar Act which modifies the Land Acquisition Act, itself states that for the purpose of acquisition of land for the Trust under the Land Acquisition Act that Act (Land Acquisition Act) shall be subject to the modifications specified in the Schedule. Therefore even for the purpose of acquiring land for the Trust the machinery of the Land Acquisition Act as modified is contemplated. It does not exclude the Land Acquisition Act, on the contrary it makes it applicable but subject to its modifications and exceptions. Now the first relevant modification is by sub-cl. (1) of clause 2 of the Schedule. There a first notice under s. 46 of the Bihar

Act is substituted for and has the same effect as a notification under s. 4 (1) of the Land Acquisition Act but that is subject to an important exception and that exception is a notification under s. 4(1) of the Land Acquisition Act or a declaration under s. 6 of that Act which "has been previously made and is in force". Thus when the exception applies the first notice under s. 46 of the Bihar Act has not that effect. The words "has been previously made" do not merely connote the issuing of a notification before the Bihar Act was passed but include all notifications made prior or anterior to the first publication of a notice of an improvement scheme under s. 46. In other words if, before a notice under s. 46 has been published a notification under s. 4(1) or a declaration under s. 6 of the Land Acquisition Act is made and is in force then the first publication of a notice under s. 46 would not be substituted for or have the same effect as a notification under s. 4(1). This construction is in accord with the construction placed by the Scottish courts in *Mercer Henderson's Trustees v. Dunfermline District Committee* (1) on similar words viz "previously in use". Lord Justice-Clerk construed those words as not being equivalent to prior to the passing of a statute. That the power of the State Government to acquire land for the Trust is not taken away by the Bihar Act is further shown by s. 33 of that Act which deals with the preparation of a master plan by the Trust. Its relevant part is as follows :—

S. 33(3) "Subject to rules as may be prescribed for regulating the form and contents of master plan, a master plan shall include such maps and such descriptive matters as may be necessary to illustrate any proposal of schemes with such degree of details as may be appropriate to different parts of the area, and any such master plan may in

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(1) 37 Sc. L.R. 119.

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particular—

- (a)
- (b) designate as land subject to compulsory acquisition by the State Government, the Trust, the planning authority appointed under section 138 or any public utility agency any land allocated by the plan for the purpose of any of their functions”

Thus the master plan has to designate the land which will be subject to compulsory acquisition by the various authorities therein mentioned including the State Government.

Again by clause 1 of the Schedule of the Bihar Act sub-s. (ee) is deemed to be inserted in s. 3 of the Land Acquisition Act and by that modification the expression “local authority” will include the Board of Trustees for the improvement of a town constituted under s. 8 of the Bihar Act which means the Trust. Section 50(1) of the Land Acquisition Act relates to the employment of the provisions of the Land Acquisition Act for the purpose of acquiring land at the costs of any fund managed or controlled by a local authority or any company. Therefore s. 50(1) would be equally available for being put into force for the purpose of a trust. This again shows that the intention of the legislature was not to exclude the functions of the Land Acquisition Act such as ss. 4, 6, 50 etc. in the matter of acquisition of land for the purpose of a Trust.

The notification issued by the State Government is not therefore invalid and the High Court was in error in holding it otherwise.

We therefore allow these appeals, set aside the judgment and order of the High Court and remit the

case to the High Court to decide the question whether the order of the State Government is hit by Art. 14—a point which was argued before the High Court but has not been decided. The costs will abide the event. One hearing fee in this Court.

SUBBA RAO, J.—I have had the advantage of reading the judgment prepared by my learned brother, Kapur, J. I regret my inability to agree with him. The facts are fully stated in his judgment and I need not restate them.

The question that falls to be considered is whether the Government of Bihar can issue a notification under ss. 4 and 6 of the Land Acquisition Act to acquire land at the expense of the Patna Improvement Trust for development of residential neighbourhood, for providing for housing facilities for various income groups and for facilitating the planned growth of the City of Patna, after the Bihar Town Planning and Improvement Trust Act, 1951 (Act 35 of 1951), hereinafter called the Act, came into force. To state it differently, the question is whether the Act replaces the Land Acquisition Act (1 of 1894) in the matter of acquisition of land for the said Trust.

The material provisions of the Act relevant to this part of the enquiry may now be read. The long title of the Act is “to provide for the improvement, development and expansion of towns in the State of Bihar”. The preamble to the Act reads :

“Whereas it is expedient to make provision for the improvement, development and expansion of towns in the State of Bihar so as to secure to their present and future inhabitants sanitary conditions, amenity and convenience.....”.

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Section 2 (16) : "Trust" means the Board of Trustees constituted under section 3.

Section 3 : 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 the town) Improvement Trust", hereinafter called "the Trust": and every such Trust shall be a body corporate and have perpetual succession and a common seal, and shall by the said name sue and be sued.

Section 69: The Trust may, with the previous sanction of the State Government, acquire land under the provisions of the Land Acquisition Act, 1894 (1 of 1894) for carrying out any of the purposes of this Act.

Section 71 : For the purpose of acquiring land for the Trust under the Land Acquisition Act, 1894 (1 of 1894)—

- (a) The said Act shall be subject to the modifications specified in the Schedule.

The Schedule gives the modifications made in the various sections of the Land Acquisition Act, 1894 (1 of 1894). It is, therefore, manifest that the Act was passed with a view to provide for the improvement, development and expansion of towns in the State of Bihar, that a statutory corporate body, called the Improvement Trust, was created thereunder, that certain powers were entrusted to it for the purpose of implementing the object of the Act, and that the provisions of the Land Acquisition Act, 1894, as modified, were incorporated therein by reference to enable the Trust to acquire lands necessary for implementing its schemes of improvement. That Act is a special and also a self-contained one.

It the Trust intends to acquire any land for its purpose, it can only do so in the manner provided by the Act. Can it ignore the provisions of the Act and approach the State Government to acquire lands for the purposes of the Act under the Land Acquisition Act, 1894? That is the simple question that arises in this case.

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The law on the subject is very well settled and, in my view, the learned Judges of the High Court have correctly appreciated it and applied it to the facts of the case. Two principles noticed by the High Court are apposite. The first principle is *generalia specialibus non derogant*. This principle is exemplified by the decision of the Privy Council in *Secretary of State v. Hindustan Co-operative Insurance Society Ltd.* (1). The second principle is that if a statute directs a thing be done in a certain way that thing shall not, even if there be no negative words, be done in any other way. This principle is illustrated by the decision in *Ex parte Stephens* (2). A combined effect of the said two principles may be stated thus: a general Act must yield to a special Act dealing with a specific subject-matter and that if an Act directs a thing to be done in a particular way, it shall be deemed to have prohibited the doing of that thing in any other way. Under the Act, the Trust is authorized to implement the improvement schemes in a particular way and for the purposes of implementing them to acquire land in a prescribed manner. If that be so, the Trust is bound to implement the scheme in the manner prescribed and cannot resort to any other method, that is to say it can acquire land for trust purposes only by resorting to the provisions of the Land Acquisition Act as modified and incorporated by reference in the Act.

A perusal of the relevant provisions of the Act also indicates an integrated design for drawing

(1) A.I.R. 1931 P.C. 149.

(2) (1876) 3 Ch. D. 659.

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schemes of improvement and implementing them by acquisition or otherwise. Under the Act many statutory powers and duties are given to the Trust for evolving different schemes and implementing them. Section 33 empowers the Trust to prepare a master plan. Sections 34, 35, 36, 39, 40, 41 and 42 authorize the Trust to make various schemes within the framework of the master plan. Section 42A enables the Trust to make a scheme for improvement in respect of an area not included in the master plan. Sections 43 to 47 provide for issue of requisite notices to persons affected by the scheme and for consideration of representations and objections that may be made to the Trust. Section 48 provides for notice of the proposed acquisition of land. Section 50 enjoins on the Trust to consider objections or representations received and to hear the parties if they so desire. On hearing objections and representations, the Trust may either abandon the scheme or apply to the State Government for the sanction of the scheme with modifications, if any, which the Trust may consider to be necessary; thereafter, the Government either gives its sanction or refuses to do so. It is, therefore, clear that under the Act before a land is acquired by the Trust for its purposes, it has got to go through a quasi-judicial procedure for finalizing the scheme. The parties affected have every opportunity to object to the scheme proposed generally or in so far as it affected their land and even thereafter to file objections to the acquisition of their land. This complicated procedure conceived to reconcile individual rights and social purposes cannot be short circuited by the Trust ignoring the Act altogether and approaching the State Government for acquiring land for its purposes which it can only implement in the manner provided by the Act. The broad scheme of the Act also, therefore, supports the conclusion that the Trust can only implement the scheme involving acquisition of land in the manner provided by the Act.

But strong reliance is placed on the provisions of the Schedule, particularly on para. 2 thereof in support of the contention that the provisions of the Land Acquisition Act are open to the Trust for acquiring lands for its purposes. Paragraph 2 of the Schedule reads :

- (1) The first publication of a notice of an improvement scheme under section 46 of the Bihar Town Planning and Improvement Trust Act 1951 (Bihar Act XXXVI of 1951) 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 notification under sub-section (1) of section 4 or a declaration under section 6 of the said Act has been previously made and is in force.
- (2) Proceedings under section 48 and sub-section (1) of section 50 of the Bihar Town Planning and Improvement Trust Act, 1951 (Bihar Act XXXV of 1951) shall be substituted for and have the same effect as proceedings under section 5-A of the said Act.
- (3) Subject to the provisions of paragraph 6 and 7 of the Schedule, the issue of a notice under clause (c) of sub-section (3) of section 39 of the Bihar Town Planning and Improvement Trust Act, 1951 (Bihar Act XXXV of 1951) in the case of land proposed to be acquired in pursuance of that clause, and in any other case the publication of a notification under section 52 of that Act shall be substituted for and have the same effect as a declaration under

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section 6 of the said Act, except where a declaration under the last mentioned section has been previously made and is in force.

The saving of notifications under ss. 4 and 6 in para. 2 (1) of the Schedule, the argument proceeds, discloses an intention of the Legislature to preserve the Land Acquisition Act of 1894 without any modification as an alternative for the Trust acquiring land to implement its scheme. This argument, if accepted, is destructive of the entire scheme of the Act. If the land Acquisition Act of 1894, without modification was preserved, what was the necessity for modifying the said Act and incorporating the modified provisions by reference in the Act? The Legislature could as well have made a provision that whenever the Trust wanted to acquire land to implement its scheme it should apply to the Government for taking steps under the Land Acquisition Act, 1894. An incongruity shall not be attributed to the Legislature unless it is unavoidable. In this case the exception in para. 2 (1) of the Schedule can easily be given a meaning without doing violence to the intention of the Legislature. Learned counsel for the appellant suggests that the notification under s. 4 or s. 6 of the Act refers to that made by the Government under the said sections before the Act came into force. But the words "previously made" are comprehensive enough to take in the notification under s. 4 or s. 6 of the Act made after the passing of the Act, but prior to the issue of the first publication of notice of implementation of the scheme under s. 46 of the Act. The exception will cover such notifications issued before or after the Act. Section 33 (3) of the Act contemplates such a notification. Under that section a master plan prepared by the Trust may designate a particular land as subject to compulsory acquisition by the State Government. If a particular land was

designated as land subject to compulsory acquisition by the State Government, the State Government can compulsorily acquire that land. The Government might have issued a notification under s. 4 or s. 6 of the Land Acquisition Act in respect of such land; in such a case the exception is attracted and the notice under s. 46 of the Act cannot be substituted for it. It is not suggested that the notification in question was issued by the Government in respect of a land designated under the master plan, as land subject to compulsory acquisition by the State Government. On this interpretation the exception does not become otiose and it fits in squarely with the scheme of the Act. So, the exception in cl. (3) dealing with deferred street schemes under s. 39 of the Act can be made to refer only to such notification issued by the Government under s. 4 or 6 of the Land Acquisition Act. I would, therefore, hold that whenever the Trust seeks to acquire land for the purpose of the implementation of the scheme for which it was constituted, it can only acquire land in the manner prescribed by the Act, that is to say, in accordance with the land acquisition provisions incorporated in the Act by reference. As in the present case the notifications issued by the Government under s. 4 of the Land Acquisition Act, 1894, for the acquisition of the land in question for trust purposes do not fall under the exception, the said notifications were void. The High Court was right in quashing the said notifications under Art. 226 of the Constitution. The appeals fail and are dismissed with costs.

BY COURT: In accordance with the majority view the appeals are allowed and the case remitted to the High Court. The costs will abide the event. One hearing fee in this court.

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