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U.P. AVAS EVAM VIKAS PARISHAD

v.

RAM KRISHNA AND ORS.

FEBRUARY 13, 2002

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[G.B. PATTANAIK, S.N. PHUKAN AND S.N. VARIAVA, JJ.]

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Uttar Pradesh Avas Evam Vikas Parishad Adhiniyam, 1965/Uttar Pradesh Planning and Development Act, 1973 Sections 16, 28 and 32/59- Housing scheme framed in a development area- Notification of the Scheme Subsequent approval of the scheme by State Government Validity of Held, approval by the State Government can be only on the final scheme prepared after consideration of objections to the notified scheme Under the law, no previous approval was warranted before the notification of the Scheme.

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The disputed area of land was declared as a development area in 1974 under the Uttar Pradesh Planning and Development Act, 1973. The Act repealed the earlier Act known as the Uttar Pradesh Avas Evam Vikas Parishad Adhiniyam, 1965 (Adhiniyam). However, this area was exempted from the Act by an amendment under section 59 of the Act in 1976. Under the exemption, appellant-Board is authorised to initiate new housing schemes in the development area with the approval of State Government under the Adhiniyam. In 1980, a housing scheme was notified by the appellant under section 28 of the Adhiniyam. The State Government approved the scheme under section 32 of the Adhiniyam in 1982. Respondents, whose lands were acquired by the appellant for the scheme, filed Writ Petitions in High Court challenging the scheme on the ground that the scheme has been notified prior to the approval by the State Government. The High Court allowed the Writ Petitions holding that only those schemes which are initiated with the prior approval of the State Government would be exempted under the provisions of the Act.

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In appeal, the appellant submitted that this Court in *U.P. Avas Evam Vikas Parishad and Anr. v. Friends Coop. Housing Society Ltd. and Anr.*, [1995] Supp 3 SCC 456 had already held that prior approval of the State Government was not necessary before initiation of the scheme by a notification under section 28 of the Adhiniyam; and that by subsequent approval, all the previous acts done and actions taken get validated and the notification made

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becomes valid.

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The Court referred the matter to a larger Bench consisting of three judges for reconsideration of the above decision holding the view that a scheme is initiated under section 16 and not under section 28 of the Adhiniyam as held previously; that it must be first approved by the State Government before notification of the same under section 28 of the Adhiniyam; and that the subsequent approval would not cure the defect.

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The respondents contended that a scheme can be initiated on framing of the scheme under Section 16 and such a scheme should be notified by the appellant under Section 28 of the Adhiniyam only after the grant of prior approval by the State Government; that the language in the Act granting exemption indicates that the initiation and approval of the scheme must be together; that the disputed scheme was not initiated with the approval of the State Government and hence, is not covered by the exemption granted under the Act; that, by the operation of the Act, the provisions of the Adhiniyam remained suspended for the disputed land and could not be invoked by the appellant and hence, the appellant had no legal authority to issue notifications under Sections 28 and/or Section 32 of the Adhiniyam and the same were wholly illegal; and that there is no subsequent approval of the State Government contemplated under the Act or the Adhiniyam.

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Disposing of the appeals, the Court

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HELD: 1.1. Under the Uttar Pradesh Avas Evam Vikas Parishad Adhiniyam, 1965, there is no provision for sanctioning of the scheme prior to its notification under section 28. The question of sanction, by the Board or the State Government, can arise only after the scheme has been notified under Section 28 of the Adhiniyam and objections thereon are heard and decided. The sanction has to be a final scheme and not to any draft scheme which has been framed. For purpose of granting a sanction. The Board and/or the State Government, has to consider not just the scheme but also the objections of the persons concerned. Only then the sanctioning authority can apply its mind as to whether the scheme is to be sanctioned and if so with that modifications if any. Mere framing of a scheme under Section 16 of the Adhiniyam does not amount to initiation. Initiation is only when notice is given to the public or the concerned parties of the scheme, which is by way of a notification under Section 28 of the Adhiniyam. [993-A-C]

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1.2. The object of exempting more schemes under the Uttar Pradesh Planning and Development Act, 1973 is to permit more housing schemes. This,

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- A** being a beneficial measure, should not be strictly construed. It has to be given a liberal interpretation. If the State Legislature intended to permit a scheme for which previous approval was required, then the Legislature would have specifically so provided. When the Legislature wanted previous approval, it has specifically so provided under sections 56 and 58 of the Act. This interpretation is further fortified by the fact that under the Adhiniyam there is no provision for granting of approval/sanction prior to the notification under section 28. If the Legislature wanted to make a complete departure from the procedure set out in the Adhiniyam, it would have had to specifically provide for such a contingency. The State Government cannot give approval without first knowing what the objections of the parties concerned is. It is only after the objections are considered that the State Government can decide whether the scheme is to be approved and if so whether it needs any modification.

[995-F-H]

- D** 1.3. The Adhiniyam nowhere provides that prior approval is a precondition. What is material is to obtain approval of the State Government. Till approval of the State Government is not obtained the scheme could not be notified under section 32 of the Adhiniyam. But once permission is granted, even though it may be granted subsequently, all further steps can be taken and the Board could then proceed. [996-D]

- E** *U.P. Avas Evam Vikas Parishad and Anr., v. Friends Coop. Housing Society Ltd. and Anr.*, [1995] Supp 3 SCC 456, relied on.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1806 of 1986.

From the Judgment and Order dated 3.10.85 of the Allahabad High Court in C.M.W.P. No. 4775 of 1984.

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C.A. No. 1807 of 1986.

Dinesh Dwivedi, P.N. Gupta, Sunil Gupta, Vivek Vishnoi, Ms. Lipika Sharma and Pramod Dayal for the appearing parties.

- G** The Judgment of the Court was delivered by
S.N. VARIA, J. These Appeals are against a Judgment dated 3rd October, 1985.

Briefly stated the facts are as follows.

- H** The area in question was declared as a development area on 20th August,

1974. On 8th, 15th and 20th March, 1980, the scheme in question was notified under Section 28 of the Uttar Pradesh Avas Evam Vikas Parishad Adhiniyam, 1965 (hereinafter referred to as the Adhiniyam). The State Government approved the scheme on 11th June, 1982. The scheme came to be notified under Section 32 of the Adhiniyam on 28th August, 1982. The Respondent then challenged the scheme on the ground that the scheme having been notified prior to the sanction of the State Government was null and void and could not be given effect to. This submission found favour with the High Court, who allowed the writ petition by the impugned judgment.

Thus the question for consideration is whether a scheme notified under Section 28 of the Adhiniyam is liable to be struck down if it has not been approved by the State Government prior to its publication. This question has been answered by this Court in the case of *U.P. Avas Evam Vikas Parishad and Anr. v. Friends Coop. Housing Society Ltd. and Anr.*, reported in [1995] Supp 3 SCC 456. In this case it has been held that prior approval was not necessary. It is held that the Petitioner Board could not implement the scheme until approval was given by the State Government. It is held that once the approval is given, all the previous acts done and actions taken get validated and the publications made under the Adhiniyam also become valid. This decision covers this case squarely.

However, when this matter reached hearing before a Bench of this Court it was referred to a larger Bench, *inter alia* with the following observations :

“When the matters were taken up, learned counsel stated that these appeals stand concluded by a decision of this Court in *U.P. Avas Evam Vikas Parishad and Anr. v. Friends Cooperative Housing Society Ltd. and Anr.*, reported in [1995] Supp. 3 SCC 456 and, therefore, the appeals deserve to be allowed. We have looked into the said decision and are of the opinion that the said decision requires consideration by a Bench of three Judges. The learned Judges in the said decision read initiation of the Scheme under Section 28 of the Adhiniyam and whereas the initiation of the Scheme is to be found under Section 16 of the Adhiniyam. Unless there is approval of the State Government of the Scheme initiated under Section 16 of the Adhiniyam, such a Scheme cannot be published under Section 28 of the Adhiniyam. There is no approval of the State Government to the Scheme initiated by the Parishad on record, and in the absence of such an approval, any subsequent approval by the State Government

A of the Scheme published under Section 28 of the Adhiniyam would not cure the defect.

B Since this Bench consists of two Judges, it cannot take a view contrary to the decision taken in the case of *U.P. Avas Evam Vikas Parishad and Anr.* (supra), which was rendered by two Hon'ble Judges, we are, therefore, of the opinion that these matters require to be decided by a Bench of three Hon'ble Judges."

Hence this matter has been placed before this Bench.

C At this stage certain provisions of the Adhiniyam may be looked at. Section 16 of the said Adhiniyam provides that the Board may frame a housing or improvement scheme (a) its own motion or (b) at the instance of a local authority or (c) when it is so directed by the State Government. It further provides that the Board may refuse to frame a scheme at the instance of a local authority, under certain contingencies, in which case it shall intimate its decision to the local authority within a year from the date of receipt of the request. Section 16 further provides that the local authority may on receipt of such intimation appeal to the State Government and the order passed by the State Government would be binding on the Board. Section 17 lays down matters which are to be provided for in a scheme. Section 18 to 27 deal with different types of schemes which could be framed by the Board. In this matter we are not concerned with the different schemes. Mr. Sunil Gupta however drew the attention of this Court to Section 18(2), which provides that the State Government could direct the Board to undertake a housing or improvement scheme of a type not specified. Section 28 provides that when a scheme has been framed, it will be notified by the Board in the manner laid down therein. Under Section 29 the Board must serve a notice, to the persons concerned stating, that the Board proposed to acquire their land or building for execution of the scheme. Section 30 provides that objections may be filed by the persons concerned. Under Section 31 the scheme could be abandoned or modified after considering the objections. Section 31 further provides that if the estimated cost of the scheme does not exceed Rs. 20 lakhs then the Board could sanction the scheme with or without modifications. If the estimated cost of the scheme exceeds Rs. 20 lakhs, the scheme has to be submitted to the State Government for sanction. The State Government could then sanction the scheme with or without modifications or refuse to sanction the scheme. Section 32 provides that if the scheme is sanctioned by the Board or the State Government, it will be notified in the Gazette and that the scheme would

come into force from the date of notification.

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Thus under the Adhiniyam there is no provision for sanctioning the scheme prior to its notification under Section 28. The question of sanction, by the Board or the State Government, can only arise after the scheme has been notified under Section 28 and objections thereon are heard and decided. This is logical. The sanction has to be to the final scheme and not to any draft scheme which has been framed. For purpose of granting a sanction, the Board and/or the State Government, has to consider not just the scheme but also the objections of the persons concerned. Only then can the sanctioning authority apply its mind as to whether the scheme is to be sanctioned and if so with what modifications if any. In our view mere framing of a scheme, under Section 16, does not amount to initiation. Initiation is only when notice is given to the public or the concerned parties of the scheme. This is by way of Notification under Section 28.

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The Uttar Pradesh Urban Planning and Development Act, 1973 provided, in Section 3 thereof, for declaration of certain areas as development areas. The U.P. Urban Planning and Development Act provides for preparation of a Master Plan and Land Development Plans for the development areas. Under Section 14 of the Act no development can take place in a development area without permission in writing. Thus by Section 59 the operations of the Adhiniyam was repealed. However housing or improvement schemes, the execution of which had commenced before June 12, 1973, and which were specified by the State Government by notification in that behalf in the Gazette were permitted to continue.

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It was then found by the Government that there was necessity for framing more housing schemes. Therefore Section 59 of the Uttar Pradesh Urban Planning and Development Act, 1973 was further amended by the U.P. Act 13 of 1975. By this amendment all housing and improvement schemes which had been notified under Section 32 of the Adhiniyam before the declaration of the area comprised therein as the development area were exempted. Thus now more schemes were exempted/permitted.

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As there was greater need for housing schemes Section 59 of the Uttar Pradesh Urban Planning and Development Act, 1973 was further amended by the U.P. Act 47 of 1976. The Statement of the Object and Reasons of the 1976 Act provides that one of the reasons for such amendment is to authorize the Board to initiate new schemes in areas falling within the jurisdiction of the Development Authorities. With this object in view the exception now

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A provides as follows :

“(except in relation to those housing or improvement schemes which have either been notified under Section 32 of Uttar Pradesh Avs Evam Vikas Parishad Adhiniyam, 1965 before the declaration of the area comprised therein as development area or which having been notified under Section 28 of the said Adhiniyam before the said declarations are thereafter approved by the State Government for continuance under the said Adhiniyam or which are initiated after such declaration with the approval of the State Government, hereinafter in this section referred to as Special Avs Parishad Schemes)”.

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Thus three distinct types of schemes are now exempted viz :-

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- (a) Housing and improvement schemes which have been notified under Section 32 of the Adhiniyam Act before declaration of the area comprised therein as development area;
- (b) Schemes which have been notified under Section 28 of the Adhiniyam Act before the said declarations and which are thereafter approved by the State Government for continuance under the Petitioner Board; and
- (c) Which are initiated after such declaration with the approval of the State Government.

In this case the scheme falls in category (c) above. On an interpretation of this provision the High Court has held that only those schemes which are initiated with the prior approval of the State Government would be exempted.

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Mr. Gupta, on behalf of the Respondent has adopted the reasoning of the High Court and has submitted that only such scheme as have been initiated with the approval of the State Government are exempted. Mr. Gupta submitted that there could be no notification under Section 28 before approval is granted by the State Government. He submitted that the approval of the State Government was sought by the Board after all the three notifications under Section 28 of the Adhiniyam had been published in the Gazette. He points out that the approval was given by the State Government on 11th June, 1982. He submits that this shows that the scheme was not initiated with the approval of the State Government. He submits that the approval has been given much after the initiation of scheme. He submits that as the scheme was not initiated

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with the approval of the State Government, it is not covered by the third

exception. He submits that the result is that the scheme is not covered by any exception whatsoever and the provisions of the Adhiniyam, by operation of law, remain under suspension for the disputed land and could not be invoked by the Board. He submitted that the Board had no legal authority to issue notifications under Sections 28 and /or Section 32 of the Adhiniyam and the same were wholly illegal. Mr. Gupta further submitted that the language of the statute did not permit any other interpretation. He submitted that the language used is "which are initiated with the approval of the State Government". He submitted that the dictionary meaning of word "initiation" is "to begin"; "to originate"; "to set afoot" or "to start". He submitted that the meaning of word "with" is - "at the same time", "in the company of". He submitted that the use of the word "with" indicates that "initiation" and "approval" must be together. He submitted that the moment a scheme was framed under Section 16 it was "initiated". He submitted that therefore the approval of the State Government must be prior to or immediately upon the framing of such scheme. He submitted that if there was no approval of the State Government then there could be no notification under Section 28 of the Adhiniyam. Shri Gupta further submitted that the word "approval" is different from the word "permission" and therefore, there could be no subsequent approval. Mr. Gupta further submitted that if a subsequent approval was contemplated then there would have been no need to create a third category as it could have been provided in the second category itself that scheme notified under Section 28, whether before or after declaration, would be exempted, if thereafter approved by the State Government.

We are unable to accept the submissions of Mr. Gupta. The object of exempting more schemes is to permit more housing schemes. In our view the clause is quite clear. This being a beneficial measure cannot be strictly construed. It has to be given a liberal interpretation. The word "initiated" is followed by the words "after such declaration". Thus the High Court was not right in clubbing the words "initiated" and the word "with" together. If the Legislature intended to permit a scheme for which previous approval was required then the Legislature would have specifically so provided. To be noted that when the Legislature wanted to provide for previous approval it has specifically so provided. This is clear from Sections 56 and 58 which use the words "Previous approval". Our interpretation is further fortified by the fact that under the Adhiniyam there is no provision for granting of approval/sanction prior to the Notification under Section 28. If the Legislature wanted to make a complete departure from the procedure set out in the Adhiniyam it would have had to specifically provide for such a contingency. We also fail

A to understand what approval the State Government can give without first knowing what the objections of the parties concerned is. It is only after the objections are considered that the State Government can decide whether the scheme is to be approved and if so whether it needs any modification.

B We cannot accept Mr. Gupta's submission that if the Legislature had intended a subsequent approval it would have so provided in clause (b) above. Three separate categories are being exempted. The third category is different from the second category. It would thus not have been possible to make a provision for third and separate category in the second exception.

C We are also in agreement with the observations in the *Friends Cooperative Housing Society Ltd.'s* case (supra) that the language used merely shows that the approval of the State Government is necessary. The Section nowhere provides that prior approval is a pre-condition. What is material is to obtain approval of the State Government. Till approval of the State Government is not obtained the scheme could not be notified under Section D 32. But once permission is granted, even though it may be granted subsequently, all further steps can be taken and the Board could then proceed. We, therefore, approve the ratio laid down in *Friends Coop. Housing Society Ltd.'s* case.

E As stated above the scheme has been approved by the State Government on 11th June, 1982 and it has been notified under Section 32 on 28th August, 1982. In this view of the matter, the impugned judgment cannot be sustained. It is accordingly set aside.

F At this stage Mr. Gupta submitted that no stay had been granted by this Court. He submitted that many of the Respondents have constructed bungalows on the plots and are staying on the plots. He submitted that this is a fit case where, even though this Court is now laying down the law, this Court should not interfere. He points out that in *Friends Cooperative Housing Society Ltd.'s* case this Court had refused to interfere.

G It is true that in *Friends Cooperative Housing Society Ltd.'s* case this Court did not interfere. However that was on the basis that the appellants therein had compromised with some persons. Here the Appellants have not compromised with anybody. He submitted that this Court may consider case directing the authorities to release the Respondent's land from acquisition. We however note that on 26th April, 1985, a statement had been made on H behalf of the Appellants that there was likelihood of releasing the land from

acquisition since it was occupied by residential houses. In our view these are not matters in respect of which we can make any provision in this order. It will be for the Respondents to apply before the concerned authority for releasing their land from acquisition. We are quite sure that if such applications are made the same will be considered sympathetically and in the right spirit. A

The appeals stand disposed of accordingly. There will be no order as to costs. B

B.S.

Appeals disposed of.