Simply because the tenant is using the premises as office from the very beginning does not make it a non-residential building as it cannot be said that it is either a commercial activity or is being used solely for business or trade. Any activity other than business or trade which is not in the nature of a commercial activity if carried on in the premises will not render or convert the building into a non-residential one. For the purposes of the Act, it will fall under the category of 'residential building' as defined therein.

(9) If the premises in dispute are held to be a residential one, it is not disputed that the landlord *bona fide* requires the same for his own use and occupation, and all the other ingredients of Section 13(3) (a) (i) of the Act are also fulfilled.

(10) For the reasons recorded above, this petition succeeds, the order of the Appellate Authority is set aside and that of the Rent Controller directing the ejectment of the tenant is restored with costs. However, the tenant is allowed three months' time to vacate the premises provided all the arrears, if any, and advance rent for three months is paid or deposited within one month from today.

N. K. S.

Before R. N. Mittal, J.

MAYA SINGH and others,—*Petitioners.*

versus

STATE OF PUNJAB and others,—*Respondents.*

Civil Writ No. 3270 of 1978.

September 30, 1980.

Punjab Town Improvement Act (IV of 1922)—Sections 36, 41, 42, 59 and clause (2) of the Schedule—Improvement Scheme framed under the Act required to be sanctioned within three years from the date of notification under section 36—Period of three years—Whether to be considered upto the date of sanction of the Scheme under section 41 or date of publication of notification under section 42.

Held, that the date of sanction under section 41 of the Punjab Town Improvement Act, 1922 and not the date of notification under

section 42 is to be taken into consideration for the purpose of determining the period of three years from the date of notification under section 36 of the Act. (Para 9).

Petition under Article 226 of the Constitution of India praying that a Writ in the nature of mandamus or any other writ, order or direction be issued to the respondent to act in pursuance of the notification dated 9th May, 1977 published on 27th May, 1977 which is illegal and against law and also the scheme be quashed being against section 27 of the Town Improvement Act, or any other appropriate writ, order or direction which this Hon'ble Court may deem fit and proper and further praying that during the pendency of the petition, the operation of the impugned Annexures P-1 and P/2 be stayed.

Issuance of the notices of motion to the respondents be dispensed with.

Filing of the certified copies of the Annexures be also dispensed with.

Costs of the petition be also awarded.

Kuldip Singh, Advocate with Y. P. Gandhi, Advocate, *for the Petitioner.*

T. S Doabia, Advocate, *for A. G. Punjab.*

H. S. Mattewal, Advocate, *for No. 2.*

JUDGMENT

Rajendra Nath Mittal, J.

(1) Briefly the case of the petitioners is that they are owners of land in Mauza Tung Pain, Nawan Khuh, Urban Area, Amritsar. Petitioners Nos. 2, 4, 5 and 6 are also owners of residential houses in the said area. The Amritsar Improvement Trust, Amritsar (hereinafter referred to as 'the Trust') framed a development scheme under Section 24 read with Section 28 of the Punjab Town Improvement Act, 1922 (hereinafter referred to as the Act) known as Truck Stand Scheme which was notified under Section 36 of the Act on May 11, 1974 (copy annexure P. 1). The petitioners filed objections to the Scheme. After hearing the objections the scheme was forwarded to the State Government (respondent No. 1) under Section 40 of the Act. It was sanctioned by the State Government on May 9, 1977 and published in the Punjab Government Gazette dated May 27, 1977.

The scheme has been challenged *inter alia* on the ground that it was sanctioned after more than three years of the notification under Section 36 of the Act and that no provision for re-housing the petitioners has been made as required under Section 27 of the Act.

(2) The writ petition has been contested by the respondents. They have pleaded that the scheme was sanctioned by the Government within the prescribed period. They have further averred that they will consider the claim of the petitioners for allotment of the plots.

(3) The main question that arises for determination is as to whether the scheme was sanctioned under Section 41 of the Act within the prescribed period. The facts of the case are not disputed. The notification under Section 36 of the Act, which is equivalent to Section 4 of the Land Acquisition Act, was published on May 11, 1974. The scheme was, as already stated, sanctioned under Section 41 of the Act by the State Government on May 9, 1977 but it was published under sub-section (1) of section 42 of the Act on May 27, 1977. It is not disputed that the scheme can be sanctioned within a period of three years from the date of the notification under Section 36 of the Act. If the date of sanctioning of the scheme by the State Government is taken into consideration then the scheme shall be deemed to have been sanctioned within time but if the date of the publication of the scheme in the Government Gazette is taken into consideration the sanction is beyond time.

(4) The counsel for the petitioners has vehemently argued that the relevant date to be taken into consideration for the abovesaid purpose is May 27, 1977. He placed reliance on a Full Bench judgment of this Court reported as *Harbans Kaur and others* v. *Ludhiana Improvement Trust, Ludhiana and others* (1). On the other hand the contention of the learned counsel for the respondents is that the relevant date for sanctioning of the scheme will be deemed to be May 9, 1977 when it was sanctioned by the State Government under section 41. According to him, it is immaterial when it was notified in the Government Gazette. To support his contention he has made a reference to *Khadim Hussain* v. *State of U.P. and others* (2).

(1) 1973 P.L.R. 511.
(2) AIR 1976 S.C. 417.

(5) In order to determine the question it will be necessary to make reference to Sections 36, 41, 42 and 59 and Clause 2 of the schedule which are as follows :—

"36. (1) When a scheme under this Act has been framed, the trust shall prepare a notice stating—

(i) .. .. ..

(ii) .. ..

(iii) .. ..

(2) The trust shall —

(a) notwithstanding anything contained in section 78 cause the said notice to be published weekly for three consecutive weeks in the Official Gazette and in a newspaper or newspapers with a statement of the period within which objections will be received, and

(b) .. .. .."

"41. (1) The State Government may sanction, either with or without modification, or may refuse to sanction, or may return for reconsideration, any scheme submitted to it under section 40.

(2) .. .. .."

42. (1) The State Government shall notify the sanction of every scheme under this Act, and the trust shall forthwith proceed to execute such scheme, provided that it is not a deferred street scheme, development scheme, or expansion scheme and provided further that the requirements of section 27 have been fulfilled.

(2) A notification under sub-section (1) in respect of any scheme shall be conclusive evidence that the scheme has been duly framed and sanctioned."

"59. For the purpose of acquiring land under the Land Acquisition Act, 1894, for the trust —

(a) .. ..

(b) the said Act shall be subject to the further modifications indicated in the Schedule to this Act."

"*Clause* 2 *of the Schedule*

(1) The first publication of a notice of any 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 clauses 10 and 11 of this Schedule, the issue of a notice under sub-section (1) of section 32 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."

(6) By virtue of section 59 the Land Acquisition Act, 1894 shall be deemed to be modified as indicated in clause 2 and other clauses of the schedule. Sub-clause (1) of Clause 2 of the schedule provides that the first publication of a notice of any improvement scheme under section 36 shall be deemed to be a publication in the Official Gazette and in the locality, as required under sub-section (1) of Section 4. Sub-clause (2) *inter alia* says that 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 Land Acquisition Act. Section 41 provides for the sanctioning of the scheme by the State Government and Section 42 provides for the publication of the notification in the official gazette. The contention of Mr. Kuldip Singh is that sub-clause (2) of Clause 2 lays down that the notification under section 42 shall be equivalent to a declaration by the State Government. According to him, the date of publication in the gazette of the sanctioning of the scheme under section 42 will be considered to be the date of sanction of the scheme.

(7) *Prima facie* the argument of Mr. Kuldip Singh appears to be very attractive. It is, however, found without merit when

examined in view of the observations of the Supreme Court in *Khadim Hussain's case* (supra), wherein a similar question came up for decision before the Court. In that case the appellant had challenged the acquisition of his land in pursuance of the scheme which was framed under the U.P. Town Improvement Act, 1919 (hereinafter referred to as 'the 1919 Act') but was finalised and sanctioned under the U.P. Avas Evam Vikas Parishad Adhiniyam (hereinafter referred to as 'the 1965 Act'). Briefly the facts were that in 1965, Gorakhpur Improvement Trust framed a Housing Accommodation Scheme. Notification under section 36 of the 1919 Act (equivalent to section 36 of the Act) was published on March 13, 1965. The appellant filed objections. Before the objections could be disposed of, the 1965 Act came into force with effect from February, 16, 1966. That provided for the establishment, incorporation and functioning of the Housing Development Board. By virtue of sub-section (1) of section 97 of the 1965 Act, the Gorakhpur Improvement Trust stood dissolved and by virtue of sub-section (3) of that section the scheme framed by the Gorakhpur Improvement Trust stood transferred to the Board to proceed further with the scheme in accordance with the provisions of the 1965 Act. Thereafter on June 17, 1968 the Board sanctioned the scheme. It was also sanctioned by the State Government and was published under section 32(1) of the 1965 Act in the Government Gazette dated May 3, 1969. Section 55(1) of the 1965 Act provides that any land required by the Board for any purpose of the Act may be acquired under the provisions of the Land Acquisition Act as amended in its application to U.P. and further modified as specified in the Schedule to that Act. (For facts also see *Khadim Hussain* vs. *State of U.P. and others* (3).

(8) It will also be relevant to point out that after the notification under section 36 had been gazetted the Land Acquisition Act was amended by the Land Acquisition (Amendment and Validation) Ordinance, 1967. The Ordinance was replaced by Land Acquisition (Amendment and Validation) Act, 1967. Section 4(2) of the Amendment Act provided that notwithstanding anything contained in Cl. (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 and Validation) Ordinance, 1967, under sub-section (1)

(3) AIR 1973 Allahabad 132.

of section 4 of the Principal Act, shall be made after the expiry of two years from the commencement of the said Ordinance. The ordinance came into force on January 20, 1967. Thus with respect to the aforesaid land a declaration could be made under section 6 of the Act by January 19, 1969. It may also be relevant to point out that now the period for declaration has been enhanced from two years to three years by a subsequent amendment.

(9) Sections 41 and 42 of the Act are similar to sections 31 and 32 of the 1965 Act and Clause 2 of the Schedule to the Act is similar to Clause 2 of that of 1965 Act. It may also be useful to point out that sections 41 and 42 of the Act are similar to sub-sections (1) and (2) of section 6 of the Land Acquisition Act respectively. Sub-clause (2) of Clause 2 of the Schedule to the 1965 Act is reproduced hereunder to appreciate the observations of the Supreme Court :—

> "(2) The issue of a notice under clause (c) of sub-section (3) of section 23 of this Act in the case of land acquired under a *Bhavi Sarak Yojana and the publication of a notification under sub-section* (1) *or, as the case may be, under sub-section* (4) *of section* 32 *of this Act in the case of land acquired, under any other housing or improvement scheme under this Act 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.*" (Emphasis is supplied).

After noticing the aforesaid provisions, Beg. J. (as he then was), speaking for the Bench, observed that it is a declaration which has to take place within two years of the expiry of the commencement of the ordinance which came into force on January 20, 1967. The learned Judge further observed that section 4(2) of the Amendment Act 1967 itself makes a distinction between a declaration under section 6 and a notification under section 4 of the Principal Act The relevant observations are as follows :—

> "....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 authorised. 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 argued 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 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* v. *Vishnu Prasad Sharma* (4) 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

(4) AIR 1966 S.C. 1593.

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 within the period of time fixed for it. We, therefore, reject the last objection also."

From the above observations it is evident that the date of sanction under section 41 and not the date of notification under section 42 has to be taken into consideration for the purpose of determining the period of three years from the date of notification under section 36 of the Act. According to sub-clause (1) of clause 2 of the Schedule, the first publication of the notice of the Improvement Scheme under section 36 of the Act shall be considered to be the notification under section 4 of the Act. In terms of the aforesaid sub-clause the notification under section 36 shall be considered to be published on May 11, 1977 and the declaration in respect of the notification under section 4 of the Act has been given by the Secretary on May 9, 1977, when he signed the same. It does not matter that the declaration was gazetted after a lapse of 18 days. In the aforesaid circumstances, the declaration shall be considered to be within time.

(10) The learned counsel for the petitioners has also submitted that Hon'ble the Supreme Court has not referred to sub-clause (2) of Clause 2 of the Schedule to the 1965 Act in the judgment. According to him, while deciding the case the aforesaid clause was not within the notice of the Supreme Court and therefore the above observations have been made. I am not convinced with the contention of the learned counsel. The mere fact that there is no mention of clause (2) of the Schedule in the judgment does not show that it was not taken into consideration by their Lordships. From the tenor of the judgment it appears that the clause was within their notice. Moreover, a reference has been made to the aforesaid clause by the learned Judges of the Allahabad High Court in the judgment against which the appeal was being heard by the Supreme Court (See *Khadim Husain* v. *State of U.P., Lucknow and others* (5). Consequently, I reject the contention of Mr. Kuldip Singh.

(5) AIR 1973 Allahabad 132.

(11) *Harbans Kaur's case* (supra), on which the reliance has been placed by Mr. Kuldip Singh, is distinguishable. In that case the declaration under section 42 was made after eight years of the notification under section 36 of the Act. The date on which the requisite sanction was given under section 41 had not been referred to, and taken into consideration by the Bench. Thus the facts in the aforesaid case are different than those of the present case. The facts of *Nagpur Improvement Trust and another* v. *Vithal Rao and others,* (6), referred to, by Mr. Kuldip Singh, are also different. In my view the ratio in them is not applicable to the facts of the present case.

(12) The counsel for the petitioners has next argued that the petitioners have not been provided with alternative plots which the Trust was bound to give. Mr. Mattewal, learned counsel for the Trust, has given an undertaking that the Trust will consider the request for allotment of the alternative accommodation to the petitioners as locally displaced persons under the Act. In view of the aforesaid undertaking it is not necessary to go into this contention.

(13) In all fairness to the learned counsel for the respondent, another contention of their's may be noticed. They have argued that clause (e) of sub-section (1) of section 101 of the Act provides that no act done or proceeding taken under the Act shall be questioned on the ground of omission, defect or irregularity not effecting the merits of the case. They argue that in the present case the objection of the petitioners is covered by the aforesaid clause and, therefore, the writ is liable to be dismissed. In view of the fact that I have already held that the scheme is valid, this contention need not be gone into.

(14) For the aforesaid reasons, the writ petition fails and is dismissed. In the circumstances of the case I, however, make no order as to costs.

(6) AIR 1973 S.C. 689.

N. K. S.