State of Madhya Pradesh and Ors.

Vs

Vishnu Prasad Sharma and Ors.

Civil Appeal No. 1018 Of 1963

(A. K. Sarkar, K.N. Wanchoo, J.R. Mudholkar JJ)

09.02.1966

JUDGMENT

SARKAR, J. -

My learned brother Wanchoo has set out the facts fully in his judgment and that relieves me of the necessity of stating them again.

The question that has arisen is whether a number of declarations under Section 6 of the Land Acquisition Act, 1894 can be issued successively in respect of different pieces of lands included within the locality specified in a notification issued under Section 4 of the Act. My learned brother has said that ss. 4, 5A and 6 of the Act have to be read together and so read, the conclusion is clear that the Act contemplates only a single declaration under Section 6 in respect of a notification under Section 4. I so entirely agree with his reasonings for this view that I find it unnecessary to add anything to them. But it was said that there are other considerations which indicate that our reading of these sections is unsound. In this judgment I propose to deal only with these considerations.

It was said that the Government may have difficulty in making the plan of its project complete at a time, particularly where the project is large and, therefore, it is necessary that it should have power to make a number of declarations under Section 6. I am wholly unable to accept this argument. First, I do not think that a supposed difficulty would provide any justification for accepting an interpretation of a statute against the ordinary meaning of the language used in it. General considerations of the kind suggested cannot authorise a departure from the plain meaning of words. Secondly, I cannot imagine a Government, which has vast resources, not being able to make a complete plan of its project at a time. Indeed, I think when a plan is made, it is a complete plan. I should suppose that before the Government starts acquisition proceedings by the issue of a notification under Section 4, it has made its plan for otherwise it cannot state in the notification, as it has to do, that the land is likely to be needed. Even if it had not then completed its plan, it would have enough time before the making of a declaration under Section 6 to do so. I think, therefore, that the difficulty of the Government, even if there is one, does not lead to the conclusion that the Act contemplates the making of a number of declarations under Section 6. I would like to observe here to avoid confusion that we are not concerned now with extension of a completely planned project conceived later. The present contention is not based on any difficulty arising out of such a case. It was said that if the Government has not finalised its plan when it makes a declarations under Section 6, it would have to start fresh acquisition proceedings beginning with a notification under Section 4 to provide for the complete plan if it could not make any more declarations and in such a case, in conceivable circumstances, it may have to pay more for the land that it then sought to acquire. This argument concedes that even if the Government has not been able to make its plan

when making a declaration under Section 6, the result is not that it cannot acquire any more land later when the plan is completed. The real point, therefore, of the present argument is that the Act should be so interpreted that the Government should not be put to extra cost when it has been unable to complete its plan at a time. This seems to me to be a strange argument. First, there is no reason why the Act should provide for the Government's failure to complete the plan. Secondly, the argument is hypothetical for one does not know for sure whether a later acquisition will cost more or less. Arguments on hypothetical considerations can have little weight in interpreting statutes. But even otherwise, this view of the matter does not support the argument. After the issue of a notification under Section 4, an owner of land in the locality notified cannot have full beneficial enjoyment of his property; he cannot, for example, build on his land for if he does so and the land is acquired, he will get no compensation for the building put up and will lose the costs incurred for it. If it is a justification for saying that a number of declarations can be made under Section 6 because otherwise the Government may have to pay more, it seems to me that it is at least an equal justification for saying that such declarations cannot have been contemplated by the Act because that would mean an avoidable deprivation of the owners of their beneficial enjoyment of lands till such time as the Government is able to make its plan. As the Act is an expropriatory Act, that interpretation of it should be accepted which puts the least burden on the expropriated owner. The Government could, of course, always make a complete plan at a time and I am unable to hold that the Act contemplated that it need not do so and go on making declarations from time to time as its plan goes on taking shape even though the result might be to increase the hardship of persons whose lands are taken away.

Reference was then made to sub-sections (1) and (4) of Section 17. These give the Government the power to take possessions of waste and arable lands included in the notification under Section 4 on the expiry of fifteen days from the publication of the notice mentioned in Section 9 and before the making of the award, without holding the enquiry contemplated by Section 5. It was said that if a notification under Section 4 included both arable and waste lands as also lands of other descriptions, it will be necessary to issue two separate declarations under s. 6 in respect of the different kinds of lands. It was also said that the vesting in respect of the two kinds of lands in the Government would also be by stages. All this, it was contended, would support the view that more than one declaration under Section 6 was contemplated in such a case. I do not feel called upon to express any opinion whether in such a case a number of declarations under Section 6 is contemplated. It is enough to say that it is not contended that this is a case of that kind. Therefore, it cannot be said that the disputed declaration under Section 6 was in this case justified under Section 17. On the contrary, if the contention that Section 17 contemplates more declarations than one under Section 6 be correct, that would be because the statute specifically so provided for a particular case. It must follow that without a special provision, more than one declaration under Section 6 was not contemplated.

The next contention was that section 48 which gives the Government power of withdrawal from acquisition before taking possession implies that a notification under Section 4 remains in force for all purpose till such withdrawal, and if it so remains in force, successive declarations under Section 6 must be permissible for otherwise it would be useless to keep the notification under Section 4 in force. The substance of this argument is that the only way to get rid of a notification under Section 4 is by a withdrawal of the acquisition proceedings under Section 48 if the proceedings are not withdrawn, the notification remains and then there may be successive declaration. This argument seems to me clearly ill founded. Now a notification under Section 4 will be exhausted if declaration is made under it in respect of the entire area covered by it. Likewise, it seems to me that if the correct interpretation is that only one declaration can be made under Section 6 that also would exhaust the notification under Section 4; that notification would no longer remain in force to justify

successive declarations under Section 6 in respect of different areas included in it. There is nothing in the Act to support the view that it is only a withdrawal under Section 48 that puts a notification under Section 4 completely out of the way. The effect of Section 48 is to withdraw the acquisition proceedings, including the notification under Section 4 with which it started. We are concerned not with a withdrawal but with the force of a notification under Section 4 having become exhausted. That is different case and has nothing to do with a withdrawal.

Lastly, we were referred to sub-sections (2) and (3) of Section 49. These sub-sections state that where a claim for compensation is made on the ground of severance of the land acquired from the remaining land of the owner for which provision is made under section 23, if the Government thinks that the claim is unreasonable it may, before the making of the award, order the acquisition of the whole land and in such a case no fresh declaration under Section 6 will be necessary. It is contended that these provisions support the view that successive declarations under Section 6 were contemplated. I do not think they do so. In any case, even if they did, then that would be because in a particular case the statute specially provided for successive declarations under Section 6. The present is not that special case. Furthermore, as I have said in connection with the argument based on Section 17, the fact that a special provision was necessary to enable successive declarations under Section 6 to be made would go to support the view that without a special provision there is no power given by the Act to issue successive declarations under section 6.

I would for these reasons dismiss the appeal with costs.

WANCHOO, J. 

The only question raised in this appeal on a certificate granted by the Madhya Pradesh High Court is whether it is open to the appropriate government to issue successive notifications under Section 6 of the Land Acquisition Act, No. 1 of 1894, (hereinafter referred to as the Act) with respect to land comprised within one notification under Section 4(1) of the Act. The question arises in this way.

On May 16, 1949, a notification was issued under Section 4(1) of the Act, by which it was declared that lands in eleven villages including village Chhawani was likely to be needed for a public purpose i.e. the erection of an iron and steel plant. It appears that thereafter notifications were issued under Section 6 with respect to the villages notified in the notification under Section 4(1) and it is not in dispute that a number of such notifications Section 6 were issued with respect to village Chhawani and some land in that village was acquired under those notifications the last of such acquisitions being in the year 1956. Thereafter on August 12, 1960, another notification under Section 6 of the Act was issued by the appropriate government proposing to acquire 486.17 acres of land in village Chhawani and the area which was proposed to be acquired was demarcated on a map kept in the office of the Collector of Durg for inspection. The notification also stated that the provisions of Section 5-A of the Act shall not apply thereto. Thereupon the respondents who are interested in some of the land notified filed a writ petition in the High Court challenging the validity of the notification under Section 6. The principal contention raised on their behalf was that the notification under Section 6 of the Act was void as it had not been preceded by a fresh notification under Section 4(1) and the notification under Section 4(1) issued in 1949 had exhausted itself when notifications under Section 6 with respect to this village had been issued previously and could not support the issue of another notification under Section 6. In substance the contention of the respondents in their petition was that a notification under section 4(1) could be followed only by one notification under section 6 and that there could be no successive notifications under section 6 with respect to lands comprised in one notification under section 4(1).

The petition was opposed on behalf of the appellant, and it was contended that it was open to the appropriate government to issue as many notifications as it deemed fit under Section 6 of the Act with respect to lands comprised in one notification under Section 4(1) and that it was not correct that the notification under Section 4(1) was exhausted as soon as one notification under Section 6 was issued with respect to a part of the land comprised in the notification under Section 4(1), and that it was always open to the appropriate government to issue successive notifications under Section 6 so long as these notification were with respect to land comprised within the notification under section 4(1).

The High Court has accepted the contention of the respondents and has held the a notification under Section 4(1) can only be followed by one notification under Section 6 and that it is not open to the appropriate government to issue successive notifications with respect to parts of the land comprised in one notification under Section 4 and that as soon as one notification is issued under Section 6 whether it be with respect to part of the land comprised in the notification under Section 4(1) or with respect to the whole of it, the notification under section 4(1) is exhaustive and cannot support any further notification under section 6, of the Act with respect to parts of land comprised in the notification under Section 6. In consequence the petition was allowed and then notification dated August 12, 1960 quashed. The appellant then applied to the High Court for a certificate which was granted; and that is how the matter has come up before us.

The question whether only one notification under Section 6 can be issued with respect to land comprised in the notification under Section 4(1) and thereafter the notification under Section 4(1) exhausts itself and cannot support any further notification under Section 6 with respect to such land depends upon the construction of Sections 4, 5-A and 6 of the Act and on the connection between these provisions. Before however we deal with these provisions we may briefly refer to the scheme of the act and the background in which these provisions have to be interpreted.

The Act provides for the exercise of the power of eminent domain and authorises the appropriate government to acquire lands thereunder for public purpose or for purposes of a company. The proceedings begin with a notification under Section 4(1). After such a notification it is permissible under Section 4(2) for any officer of government, his servants and workmen to enter upon and survey the land in such locality, to dig or bore into the sub-soil to do all other acts necessary to ascertain whether the land is adapted for the purpose for which it was needed, to set out the boundaries of the land proposed to be taken and the intended line of the work proposed to be made thereon, to mark boundaries etc., by placing marks and fences and where otherwise the survey cannot be completed to cut down and clear away any part of any standing crop, fence or jungle. While the survey is being done under Section 4(2), it is open to any person interested in the land notified under Section 4(1) to object under Section 5-A before the Collector within thirty days after the issue of the notification to the acquisition of the land or of any land in the locality. The Collector is authorised to hear the objections and is required after hearing all such objections and after making such further enquiry as he thinks necessary to submit the case for the decision of the appropriate government together with the record of the proceedings held by him and a report containing his recommendations on the objections. Thereafter the appropriate government decides the objections and such decision is final. If the appropriate government is satisfied after considering the report that any particular land is needed for a public purpose or for a company it has to make a declaration to that effect. After such a declaration has been made under Section 6 the appropriate government directs the Collector under Section 7 to take order for the acquisition of the land. Sections 8 to 15 provide for the proceedings before the Collector. Section 16 authorises the Collector to take possession after he has made the award under section 11 and thereupon the land vests absolutely in

the government free from all encumbrances. Section 17 provides for special powers in cases of urgency. If a person is not satisfied with the award of the Collector, sections 18 to 28 provide for proceedings on a reference to court. Sections 31 to 34 provide for payment of compensation. Sections 38 to 44 make special provisions for acquisition of land for companies. Section 48 gives power to government to withdraw from the acquisition of any land of which possession has not been taken. Section 49 provides for special powers with respect to acquisition of house, building or manufactory and of land severed from other land.

It will be seen from this brief review of the provisions with respect to acquisition of land that sections 4 and 6 are the basis of all the proceedings which follow and without the notifications required under sections 4 and 6 no acquisition can take place. The importance of a notification under section 4 is that on the issue of such notification the land in the locality to which the notification applies is in a sense freezed. This freezing takes place in two ways. Firstly the market value of the land to be acquired has to be determined on the date of the notification under section 4(1) : (see section 23(1) firstly). Secondly, any outlay or improvements on or disposal of the land acquired commenced, made or effected without the sanction of the Collector after the date of the publication of the notification under section 4(1) cannot be taken into consideration at all in determining compensation : (see section 24, seventhly).

It is in this background that we have to consider the question raised before us. Two things are plain when we come to consider the construction of sections 4, 5A and 6. The first is that the Act provides for acquisition of land of persons without their consent, though compensation is paid for such acquisition; the fact however remains that land is acquired without the consent of the owner thereof and that is a circumstance which must be borne in mind when we come to consider the question raised before us. In such a case the provisions of the statute must be strictly construed as it deprives a person of his land without his consent. Secondly, in interpreting these provisions the court must keep in view on the one hand the public interest which compels such acquisition and on the other the interest of the person who is being deprived of his land without his consent. It is not in dispute that it is open to the appropriate government to issue as many notifications as it deems fit under section 4(1) even with respect to the same locality followed by a proper notification under section 6 so that the power of the appropriate government to acquire land in any locality is not exhausted by the issue of one notification under section 4(1) with respect to that locality. On the other hand as the compensation has to be determined with reference to the date of the notification under section 4(1) the person whose land is to be acquired may stand to lose if there is a great delay between the notification under section 4(1) and the notification under section 6 in case prices have risen in the meantime. This delay is likely to be greater if successive notifications under section 6 can be issued with respect to land comprised in the notification under section 4 with greater consequential loss to the person whose land is being acquired if prices have risen in the meantime. It is however urged that price may fall and in that case the person whose land is being acquired will stand to gain. But as it is open to the appropriate government to issue another notification under section 4 with respect to the same locality after one such notification is exhausted by the issue of a notification under section 6, it may proceed to do so where it feels that prices have fallen and more land in that locality is needed and thus take advantage of the fall in prices in the matter of acquisition. So it is clear that there is likely to be prejudice to the owner of the land if the interpretation urged on behalf of the appellant is accepted while there will be no prejudice to the government if it is rejected for it can always issue a fresh notification under section 4(1) after the previous one is exhausted in case prices have fallen. It is in this background that we have to consider the question raised before us.

As we have said already, the process of acquisition always begins with a notification under section 4(1). That provision authorises the appropriate government to notify that land in any locality is needed or is likely to be needed for any public purpose. It will be noticed that in this notification the land needed is not particularised but only the locality where the land is situated is mentioned. As was observed by this Court in Babu Barkya Thakur v. The State of Bombay ((1961) 1 S.C.R. 128), a notification under section 4 of the Act envisages a preliminary investigation and it is only under section 6 that the government makes a firm declaration. The purpose of the notification under section 4(1) clearly is to enable the government to take action under section 4(2) in the matter of survey of land to decide what particular land in the locality specified in the notification under section 4(1) it will decide to acquire. Another purpose of the notification under section 4(1) is to give opportunity to persons owning land in that locality to make objections under section 5-A. These objections are considered by the Collector and after considering all objections he makes a report containing his recommendation on the objections to the appropriate government whose decision on the objections is final. Section 5-A obviously contemplates consideration of all objections made to the notification under section 4(1) and one report thereafter by the Collector to the government with respect to those objections. The government then finally decides those objections and thereafter proceeds to make a declaration under section 6. There is nothing in section 5-A to suggest that the Collector can make a number of reports dealing with the objections piecemeal. On the other hand section 5-A specifically provides that the Collector shall hear all objections made before him and then make a report i.e. only a single report to the government containing his recommendation on the objections. It seems to us clear that when such a report is received from the Collector by the government it must give a decision on all the objections at one stage and decide once for all what particular land out of the locality notified under section 4(1) it wishes to acquire. It has to be satisfied under section 6 after considering the report made under section 5-A that a particular land is needed for a public purpose or for a company and it then makes a declaration to that effect under section 6. Reading sections 4, 5-A and 6 together it seems to us clear that the notification under section 4(1) specifies merely the locality in which the land is to be acquired and then under section 4(2) survey is made and it is considered whether the land or part of it is adapted to the purpose for which it is required and maps are prepared of the land proposed to be taken. Then after objections under section 5-A have been disposed of the government has to decide what particular land out of the locality specified in the notification under section 4(1) it will acquire. It then makes a declaration under section 6 specifying the particular land that is needed.

Sections 4, 5-A and 6 in our opinion are integrally connected. Section 4 specifies the locality in which the land is acquired and provides for survey to decide what particular land out of the locality would be needed. Section 5-A provides for hearing of objections to the acquisition and after these objections are decided the government has to make up its mind and declare what particular land out of the locality it will acquire. When it has so made up its mind it makes a declaration as to the particular land out of the locality notified in section 4(1) which it will acquire. It is clear from this intimate connection between sections 4, 5-A and 6 that as soon as the government has made up its mind what particular land out of the locality it requires, it has to issue a declaration under section 6 to that effect. The purpose of the notification under section 4(1) is at this stage over and it may be said that it is exhausted after the notification under section 6. If the government requires more land in that locality besides that notified under section 6, there is nothing to prevent it from issuing another notification under section 4(1) making a further survey if necessary, hearing objections and then making another declaration under section 6. The notification under section 4(1) thus informs the public that land is required or would be required in a particular locality and thereafter the members of the public owning land in that locality have to make objections under section 5-A; the

government then makes up its mind as to what particular land in that locality is required and makes a declaration under section 6. It seems to us clear that once a declaration under section 6 is made, the notification under section 4(1) must be exhausted, for it has served its purpose. There is nothing in sections 4, 5-A and 6 to suggest that section 4(1) is a kind of reservoir from which the government may from time to time draw out land and make declarations with respect to it successively. If that was the intention behind sections 4, 5-A and 6 we would have found some indication of it in the language used therein. But as we read these three sections together we can only find that the scheme is that section 4 specifies the locality, then there may be survey and drawing of maps of the land and the consideration whether the land is adapted for the purpose for which it has to be acquired, followed by objections and making up of its mind by the government what particular land out of that locality it needs. This is followed by a declaration under section 6 specifying the particular land needed and that in our opinion completes the process and the notification under section 4(1) cannot be further used thereafter. At the stage of section 4 the land is not particularised but only the locality is mentioned; at the stage of section 6 the land in the locality is particularised and thereafter it seems to us that the notification under section 4(1) having served its purpose exhausts itself. The sequence of events from a notification of the intention to acquire (section 4(1)) to the declaration under section 6 unmistakably leads one to the reasonable conclusion that when once a declaration under section 6 particularising the area out of the area in the locality specified in the notification under section 4(1) is issued, the remaining non-particularised area stands automatically released. In effect the scheme of these three sections is that there should be first a notification under section 4(1) followed by one notification under section 6 after the government has made up its mind which land out of the locality it requires.

It is urged however that where the land is required for a small project and the area is not large the government may be able to make up its mind once for all what land it needs, but where as in the present case land is required for a large project requiring a large area of land government may not be able to make up its mind all at once. Even if it be so there is nothing to prevent the government from issuing another notification under section 4 followed by a notification under section 6. As we have said before, the government's power to acquire land in a particular locality is not exhausted by issuing one notification under section 4(1) followed by a notification under section 6. The interpretation which has commended itself to us therefore does not deprive the government of the power to acquire more land from the same locality if later on it thinks that more land than what has been declared under section 6 is needed. It can proceed to do so by a fresh notification under section 4(1) and a fresh declaration under section 6. Such a procedure would in our opinion be fair to all concerned; it will be fair to government where the prices have fallen and it will be fair to those whose land is being acquired where the prices have risen. Therefore as we read these three sections we are of opinion that they are integrally and intimately connected and the intention of legislature was that one notification under section 4(1) should be followed by survey under section 4(2) and objections under section 5-A and thereafter one declaration under section 6. There is nothing in sections 4, 5-A and 6 which supports the construction urged on behalf of the appellant and in any case it seems to us that the construction which commends itself to us and which has been accepted by the High Court is a fair construction keeping in view the background to which we have referred. Even if two constructions were possible, which we think is not so, we would be inclined to the construction which has commended itself to us because that construction does not restrict the power of the government to acquire land at any time it deems fit to do and at the same time works fairly towards persons whose land is to be acquired compulsorily.

It now remains to consider certain other provisions of the Act to which reference has been made on behalf of the appellant to show that successive notifications under section 6 are contemplated with

respect to land in a locality specified in the notification under section 4(1). The first provision is contained in section 17(4). Section 17(1) gives power to government in cases of urgency to direct that the Collector should take possession of the land before the award is made and such possession can be taken on expiration of fifteen days from the publication of the notice under section 9(1). Further such possession can only be taken of waste or arable land and on such possession being taken such land vests absolutely in the government free from all encumbrances. To carry out the purposes of section 17(1), Section 17(4) provides that the appropriate government may direct that the provisions of section 5-A shall not apply in cases of urgency and if it so directs, a declaration under section 6 may be made in respect of the land at any time after the publication of the notification under section 4(1). It is urged that this shows that where the land notified under section 4(1) includes land of the kind mentioned in section 17(1) and also land which is not of that kind it would be open to government to make a declaration under section 6 with respect to the land mentioned in section 17(1) immediately after the notification under section 4(1) while notification with respect to the land which is not of the kind mentioned in section 17(1) can follow later after the enquiry under section 5-A is over and objections have been disposed of. So it is urged that more than one declaration is contemplated under section 6 after one notification under section 4(1). There are two answers to this argument. In the first place where the land to be acquired is of the kind mentioned in section 17(1) and also of the kind not included in section 17(1) there is nothing to prevent the government from issuing two notifications under section 4(1) one relating to land which within section 17(1) and the other relating to land which cannot come within section 17(1). Thereafter the government may issue a notification under section 6 following the notification under section 4(1) with respect to the land to which section 17(1) applies while another notification under section 6 with respect to land to which section 17(1) does not apply can follow after the enquiry under section 5-A. So section 17(4) does not necessarily mean that there can be two notifications under section 6 where the provisions of that section are to be utilised, for, the government can from the beginning issue two notifications under section 4 and follow them up by two declarations under section 6. But even assuming that it is possible to make two declarations under section 6 (though in view of what we have said above this is not necessary and we express no final opinion about it) where the land to be acquired is both of the kind mentioned in section 17(1) and also of the kind not comprised therein, all that the government can do in those circumstances after one notification under section 4(1) comprising both lands is to issue one notification under section 6 comprising lands coming within section 17(1) and another notification under section 6 with respect to land not coming within section 17(1) sometime later after the enquiry under section 5-A is finished. This however follows from the special provisions contained in section 17(1) and (4) and in a sense negatives the contention of the appellant based only on sections 4, 5-A and 6. It may be added that that is not the position in the present case. Therefore even if it were possible to issue two notifications under section 6 in the special circumstances arising out of the application of section 17(4), all that is possible is to issue one notification relating to land to which section 17(1) applies and another notification relating to land to which section 17(1) cannot apply. Further if both these kinds of land are included in the notification under section 4(1), the issue of two notifications under section 6 follows from the special provisions contained in section 17(1) and section 17(4) and not from the provisions of sections 4, 5-A and 6. The present is not a case of this kind, for the notification under section 4(1) in this case issued in May 1949 did not contain any direction relevant to section 17(4). It is true that the declaration under section 6 dated August 12, 1960 contains a direction under section 17(4), but the effect of that merely is to allow the government to take possession of the land within 15 days after the issue of notice under section 9(1). This is on the assumption that a direction under section 17(4) can be issued along with the notification under section 6 as to which we express no opinion. We are therefore of opinion that the provisions in

section 17(4) do not lead to the conclusion that section 6 contemplates successive notifications following one notification under section 4(1). As we interpret sections 4, 5-A and 6 that is not the intention in a normal case. Even in a case of urgency there can at the most be only two notifications under section 6 following one notifications under section 4(1), one relating to land which is covered by section 17(1) and the other relating to land which is not covered by section 17(1), provided both kinds of land are notified by one notification under section 4(1). As we have said even that is not necessary for we are of opinion that in such a case the government can issue two notifications under section 4(1), one relating to land to which section 17(1) applies and the other relating to land to which section 17(1) does not apply and thereafter there will be two notifications under section 6 each following its own predecessor under section 4(1).

Then reliance is placed on section 48 which provides for withdrawal from acquisition. The argument is that section 48 is the only provision in the Act which deals with withdrawal from acquisition and that is the only way in which government can withdraw from the acquisition and unless action is taken under section 48(1) the notification under section 4(1) would remain (presumably for ever). It is urged that the only way in which the notification under section 4(1) can come to an end is by withdrawal under section 48(1). We are not impressed by this argument. In the first place, under section 21 of the General Clauses Act, (No. 10 of 1897), the power to issue a notification includes the power to rescind it. Therefore it is always open to government to rescind a notification under section 4 or under section 6, and withdrawal under section 48(1) is not the only way in which a notification under section 4 or section 6 can be brought to an end. Section 48(1) confers a special power on government of withdrawal from acquisition without cancelling the notifications under sections 4 and 6, provided it has not taken possession of the land covered by the notification under section 6. In such circumstances the government has to give compensation under section 48(2). This compensation is for the damage suffered by the owner in consequence of the notice under section 9 or of any proceedings thereafter and includes costs reasonably incurred by him in the prosecution of the proceedings under the Act relating to the said land. The notice mentioned in sub-sections (2) obviously refers to the notice under section 9(1) to persons interested. It seems that section 48 refers to the stage after the Collector has been asked to take order for acquisition under section 7 and has issued notice under section 9(1). It does not refer to the stage prior to the issue of the declaration under section 6. Section 5 says that the officer taking action under section 4(2) shall pay or tender payment for all necessary damage done by his acting under section 4(2). Therefore the damage, if any, caused after the notification under section 4(1) is provided in section 5. Section 48(2) provides for compensation after notice has been issued under section 9(1) and the Collector has taken proceedings for acquisition of the land by virtue of the direction under section 7. Section 48(1) thus gives power to government to withdraw from the acquisition without cancelling the notifications under sections 4 and 6 after notice under section 9(1) has been issued and before possession is taken. This power can be exercised even after the Collector has made the award under section 11 but before he takes possession under section 15. Section 48(2) provides for compensation in such a case. The argument that section 48(1) is the only method in which the government can withdraw from the acquisition has therefore no force because the government can always cancel the notifications under sections 4 and 6 by virtue of its power under section 21 of the General Clauses Act and this power can be exercised before the government directs the Collector to take action under section 7. Section 48(1) is a special provision for those cases where proceedings for acquisition have gone beyond the stage of the issue of notice under section 9(1) and it provides for payment of compensation under section 48(2) read with section 48(3). We cannot therefore accept the argument that without an order under section 48(1) the notification under section 4 must remain outstanding. It can be cancelled at any time by government under

section 21 of the General Clauses Act and what section 48(1) shows is that once government has taken possession it cannot withdraw from the acquisition. Before that it may cancel the notifications under sections 4 and 6 or it may withdraw from the acquisition under section 48(1). If no notice has been issued under section 9(1) all that the government has to do is to pay for the damage caused as provided in section 5; if on the other hand a notice has been issued under section 9(1), damage has also to be paid in accordance with the provisions of sections 48(2) and (3). Section 48(1) therefore is of no assistance to the appellant for showing that successive declarations under section 6 can be made with respect to land in the locality specified in the notification under section 4(1).

Then reference is made to section 49(2) and (3). These sub-sections lay down a special provision applicable in certain circumstances. Among the factors to be taken into consideration in fixing the compensation is the damage if any sustained by the person interested at the time of the Collector's taking possession of the land by reason of severing such land from his other land. Section 49(2) provides that if a person is claiming an unreasonable and excessive compensation for this kind of damage, the government can order the acquisition of the whole of the land even though under section 6 only part of the land may have been declared. Sub-section (3) provides that in such a case no action under section 6 to section 10 would be necessary and that all that the Collector is to do is to give an award under section 11. The argument is that section 49(3) does not mention section 4 and therefore it follows that successive notifications under section 6 can be issued with respect to land in the locality specified in the notification under section 4(1). We have not been able to understand how this follows from the fact that section 4(1) is not mentioned in section 49(3). As we have said already section 49(2) and (3) provide for a very special case and the order of government under section 49(2) may in a sense be taken to serve the purpose of section 4(1) in such a special case. Thereafter all that section 49(3) provides is that the Collector may proceed straight off to determine compensation under section 11, the reason for this being that all the other steps necessary for determining compensation under section 11 have already been taken in the presence of the parties.

Lastly it is urged that vesting is also contemplated in two stages and that shows that successive notifications can be issued under section 6 following one notification under section 4(1). Section 16 provides for taking possession and vesting after the award has been made. Section 17 provides for taking possession and consequent vesting before the award is made in case of urgency. We fail to see how these provisions as to vesting can make any difference to the interpretation of sections 4, 5-A and 6. Section 16 deals with normal case where possession is taken after the award is made while section 17(1) deals with a special case where possession is taken fifteen days after the notice under section 9(1). Vesting always follows taking of possession and there can be vesting either under section 16 or under section 17(1) depending upon whether the case is a normal one or an urgent one. What we have said with respect to section 17(1) and section 17(4) would apply in this matter of vesting also and if the matter is of urgency the government can always issue two notifications under section 4, one relating to land urgently required and covered by section 17(1) and the other relating to land not covered by section 17(1). The argument based on these provisions in section 16 and section 17 can have no effect on the interpretation of sections 4, 5-A and 6 for reasons which we have given when dealing with sections 17(1) and 17(4). We are therefore of opinion that the High Court was right in holding that there can be no successive notifications under section 6 with respect to land in a locality specified in one notification under section 4(1). As it is not in dispute in this case that there have been a number of notifications under section 6 with respect to this village based on the notification under section 4(1) dated May 16, 1949, the High Court was right in quashing the notification under section 6 issued on August 12, 1960 based on the same notification under section 4(1).

The petition had also raised a ground that the notification under section 6 was vague. However, in view of our decision on the main point raised in the case we express no opinion on this aspect of the matter.

The appeal therefore fails and is hereby dismissed with costs.

Appeal dismissed.

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