GUJARAT HIGH COURT

Valji Mulji Soneji

Vs.

State of Gujarat

Special Civil Application No. 729 of 1968

(P.N. Bhagwati C.J. and N.K. Vakil, J.)

14/17/18.03.1969

JUDGMENT

P.N. Bhagwati, C.J.

1. This petition under Article 226 is directed against a notification dated 10th October 1967 issued by the Government of Gujarat under Section 6 of the Land Acquisition Act, 1894. The facts giving rise to the petition are material and it is necessary to set them out in some detail.

2. The petitioners, according to their case as laid in the petition, are tenants of different lands forming part of final plots Nos. 41, 42 and 43 constituting Astodia Mill Compound situate at Astodia in the city of Ahmedabad. The then Government of Bombay by a notification dated 10th October 1952 issued under Section 4 of the Land Acquisition Act, 1894, notified that final plots Nos. 41, 42 and 43 were likely to be needed for a public purpose, namely, State Transport. The petitioners filed their objections against the proposed acquisition of their lands and after hearing the objectors, the Special Land Acquisition Officer submitted his report to the then Government of Bombay under Section 5 A Sub-section (2) of the Act. The petitioners however in the meantime filed Civil Suit No. 1262 of 1953 in the Court of the Civil Judge, Senior Division at Ahmedabad for a declaration that the notification under Section 4 issued by the then Government of Bombay was illegal and ultra vires and for a permanent injunction restraining the State of Bombay from proceeding with the acquisition of the lands in the possession of the petitioners. Immediately after filing the suit the petitioners made an application for interim injunction restraining the State of Bombay from proceeding further with the acquisition but the application was rejected and interim injunction was not granted. The then Government of Bombay thereupon proceeded to issue a notification dated 14th August 1953 under Section 6 of the Act declaring inter alia that final plots Nos. 41, 42 and 43 were required for the purpose of State Transport. There is nothing on the record to show but it does appear that on the issue of the notification under Section 6, the petitioners amended the plaint and also included challenge to the validity of

the declaration contained in Section 6 notification. The suit was thereafter tried by the Civil Judge, Senior Division, Ahmedabad and the learned trial Judge by a judgment dated 20th January 1959 held that the notifications under Sections 4 and 6 impugned in the suit were valid and did not suffer from any infirmity and accordingly dismissed the suit. Two appeals were filed against the judgment of the learned trial Judge, by some of the petitioners and the other by the rest of them but the appeals met with the same fate: they were dismissed by the learned Second Extra Assistant Judge at Ahmedabad by a judgment dated 20th September 1959. The petitioners thereupon preferred a second appeal in the High Court but this appeal too was dismissed by the High Court on 1st August 1960. The petitioners however did not rest content with the dismissal of their second appeal by the High Court but with special leave preferred two appeals to the Supreme Court. These two appeals were allowed by the Supreme Court by a common judgment delivered on 8th May 1963 and the Supreme Court passed a decree in the following terms: "We therefore allow the appeals and decree the suit of the appellants with costs in all the Courts. "The prayer in the suit being directed against both Section 4 and Section 6 notifications, the effect of granting this decree was that both Section 4 and Section 6 notifications were declared illegal and ultra vires. But this was an obvious mistake. It is apparent from the judgment of the Supreme Court which is now reported in *Valjibhai v. State of Bombay*[1] that the only notification struck down by the Supreme Court was that under Section 6 and so far as Section 4 notification was concerned, far from being declared illegal and ultra vires it was sustained and the challenge to its validity was rejected. The decree passed by the Supreme Court was therefore inconsistent with its judgment and an application was accordingly made by the State of Gujarat which had come into existence in the meantime as a result of the bifurcation of the State of Bombay, for speaking to the minutes of the decree with a view to bringing it in accord with the judgment. The application was made sometime in 1965 and the Supreme Court by an order dated 13th September 1965 granted the application and directed that the words "and decree the suit of the appellants with costs in all the Courts" be deleted and instead the following words be substituted, namely, "and decree the suit for permanent injunction restraining the respondents from proceeding further with the land acquisition proceedings under the said notification issued under Section 6(1) of the Act with costs in all the Courts. "Section 4 notification thus came out unscathed and its validity was upheld by the decision of the Supreme Court. The Government of Gujarat thereafter by a resolution dated 22nd February 1966 sanctioned a nominal contribution of Re. 1/- towards the cost of acquisition of lands which were proposed to be acquired under Section 4 notification. Since several years had passed since the date of the original inquiry under Section 5A, the Additional Special Land Acquisition Officer also issued a notice dated 1st August 1966 intimating to the petitioners that if they wanted to submit any further objections over and above the objections submitted at the original inquiry under Section 5A, they could submit the same on or before 16th August 1966. The petitioners accordingly submitted further objections on 31st August 1966 and these objections were inquired into by the Additional Special Land Acquisition Officer at a personal hearing given to the petitioners which was completed on 13th April 1967. It does not appear from the record whether another report was submitted by the Additional Special Land Acquisition Officer to the Government of Gujarat but presumably it must have been

submitted since a fresh inquiry was held into the further objections filed by the petitioners. The original contribution made by the Government of Gujarat to the cost of acquisition was ₹ 1/- as set out in the resolution dated 22nd February 1966 but during this period taken up in the fresh inquiry, it was increased to ₹ 500/- by another resolution dated 2nd March 1967. The Government of Gujarat thereafter issued a fresh notification

[1] AIR 1963 SC 1890

dated 10th October 1967 under Section 6 declaring inter alia that final plots Nos. 41, 42 and 43 were required for the purpose specified in column 4 of the Schedule, namely, for construction of bus station and allied purposes by the Gujarat State Road Transport Corporation. The petitioners thereupon filed the present petition challenging the validity of this notification under Section 6, hereinafter referred to as the impugned Section 6 notification.

3. There was only one ground on which the validity of the impugned Section 6 notification was challenged on behalf of the petitioners and it was that the impugned Section 6 notification was issued more than fifteen years after the date of Section 4 notification and having been issued after unreasonable delay, it was illegal and void. This ground rested on the premise that the notification under Section 6 must be issued without unreasonable delay after the issue of the notification under Section 4. We shall presently examine the validity of this premise but before we do so, we might dispose of a preliminary objection raised on behalf of the respondents. The respondents urged that the petitioners might and ought to have contended before the Supreme Court in the appeal preferred by them in Suit No. 1262 of 1953 that considerable time had elapsed since the issue of Section 4 notification and it was therefore not competent to the Government to issue a fresh notification under Section 6 on the strength of that notification and the Government should consequently be restrained by a permanent injunction from doing so. This contention not having been raised by the petitioners in the appeal before the Supreme Court was barred on principles analogous to res judicata and the petitioners were therefore not entitled to contend in the present petition that the impugned Section 6 notification having been issued after lapse of unreasonable time was invalid. This was the form in which the preliminary objection was formulated but we must confess our inability to comprehend it. It is a little difficult to understand how the petitioners could urge in the appeal before the Supreme Court that reasonable time since the issue of Section 4 notification having expired, the Government was not entitled to issue a fresh notification under Section 6 on the basis of the existing Section 4 notification. That would be a totally different cause of action based on facts arising subsequent to the suit and moreover the petitioners could not be expected to anticipate that if Section 6 notification impugned in the appeal was struck down, the Government would proceed to issue a fresh notification under Section 6 on the basis of existing Section 4 notification and claim relief on that footing. Besides such contention, if raised, would have been clearly premature, for the petitioners could have no cause of action until a fresh notification was issued under Section 6 by availing of existing Section 4 notification. It is, therefore, idle to contend that the petitioners should have raised this contention in the appeal before the Supreme Court and not having done

so, they are precluded from urging it in the present petition. The challenge to the validity of the impugned Section 6 notification cannot be stifled on this ground.

4. Turning now to the merits of the challenge, the short question which it raises is whether the Government is bound to issue notification under Section 6 without unreasonable delay after the issue of the notification tinder Section 4. There is no decided case dealing with this question and though in one case which went to the Supreme Court, namely, *Girdharlal Shodkan v. State of Gujarat*[2], this (VII G.L.R. 957 question was sought to be raised, the Supreme Court declined to entertain it since it was not raised in the High Court

[2] AIR 1966 SC 1408

and refused to express any opinion upon it. The question is therefore open and it has to be determined on first principle unaided-and also untrammeled-by any authority.

5. Now it is indisputable, and indeed no dispute was raised about it, that there is no express provision in the Act requiring that notification under Section 6 must be issued within reasonable time after the issue of Section 4 notification. The respondents therefore contended that to import this requirement in the exercise of statutory power under Section 6 would be to add words in the sections which are not there and that would be clearly impermissible under any canon of construction. If the Legislature wanted to provide a time limit for the exercise of statutory power under Section 6, the Legislature could have done so by using express words as it has done in various other sections of the Act but, said the respondents, the Legislature has deliberately and advisedly refused to impose any restriction of time limit and the Court would be acting beyond its legitimate function of interpretation if it read this restriction in the Act. This contention, though the respondents did not confess in so many terms, really proceeds on the assumption that the Legislature can express its will only by express legislation. But that is not correct. The Legislature can legislate not only expressly but also by necessary implication. It is therefore no answer to the argument of the petitioners to say that there is no express provision in the Act prescribing reasonable time as the time limit within which the notification under Section 6 must follow Section 4 notification. Even if there is no express provision, we would still have to consider whether any time limit is provided by the Legislature by necessary implication and that would depend upon the construction of the provisions of the Act. When an implication is raised we do not add words to the section but we merely ascertain the intention of the Legislature by a process of judicial interpretation. It is no doubt true, and there we agree with the respondents, that the requirement as to reasonable time is not necessarily to be implied in every case of exercise of legislative power. Whether a reasonable time limit is to be imported or not must depend ultimately on implication to be raised from the provisions of the Act The implication may arise from the nature of the power, its impact on the rights of the public, its effect and consequences and the context and scheme of the provisions relating to conferment of the power. The doctrine that every statutory power must be exercised reasonably-a doctrine too firmly entrenched in our jurisprudence to brook any refutation-may also assist in raising the implication. Where the exercise of the power after an unreasonably long period would render the exercise unreasonable,

implication would readily be made that the Legislature could not have intended that the power may be exercised at any time, howsoever distant or remote. We must therefore proceed to examine in the light of this discussion whether the requirement as to reasonable time could be imported in the exercise of the statutory power under Section 6 as a matter of necessary implication.

6. The scheme of Sections 4, 5A and 6 has been analyzed in numerous judgments of this Court as well as the Supreme Court and it need not detain us. It is clear that the notification under Section 4 marks the starting point of the process of acquisition: no acquisition can take place without issue of Section 4 notification. Now the importance of Section 4 notification lies in this that as soon as it is issued, the land in the locality to which it relates is in a sense freezed. This freezing takes place in two ways. Firstly, compensation for the land to be acquired has to be determined on the basis of its market value on the date of the notification under Section 4. Vide Section 23(1), firstly. Secondly, no outlay or improvements on or disposal of the land acquired, commenced, made or effected without the sanction of the Collector after the date of publication of Section 4 notification can be taken into account in determining compensation. Vide Section 34, seventhly. Considerable prejudice would therefore likely be caused to the owner of the land if there is unreasonable delay between the publication of Section 4 notification and the making of declaration under Section 6. During the whole of the period he would have only a qualified ownership or enjoyment of his property. If land, he could not improve it or build upon it: if a house, he could not rebuild or repair it however urgent the necessity of doing so might be, without the strong probability of getting no return for the money so laid out, if the Government ultimately took over the land. He would also not be able to earn maximum return from the property by letting it out profitably for it is elementary that few good tenants can be found if they apprehend that they might be liable to be turned out in the course of a short time. Could the Legislature have intended that this suspense over the head of the land owner should be allowed to continue for an indefinite or, in other words, unreasonable length of time? Moreover, since compensation is to be determined with reference to the date of publication of Section 4 notification, the land owner would stand to lose if unreasonable delay in issuing Section 6 notification is made, in case prices have risen in the meantime. If the prices have fallen, the Government can always take advantage of the fall in prices by cancelling the existing Section 4 notification and issuing another Section 4 notification in its place but if there is rise in the prices, the land owner would suffer and the longer the delay, the greater would be the possibility of rise, particularly in urban areas. These circumstances clearly and inevitably point to the conclusion that the Legislature could never have intended that the declaration under Section 6 may be made at any time even after the expiration of an indefinite or unreasonable length of time after the issue of Section 4 notification. The exercise of the power to make a declaration under Section 6 after an indefinite or unreasonable length of time would clearly be unreasonable and must therefore lead to the implication that the notification under Section 6 must be issued within reasonable time after Section 4 notification. We may point out that these very circumstances were taken into account by the Supreme Court in *State of Madhya Pradesh v. Vishnu Prasad*[3], for implying from

the provisions of Sections 4, 5A and 6, though these sections did not say so in so many terms, that there can be only one notification under Section 6 following upon a notification under Section 4 and a single notification under Section 4 cannot support successive notifications under Section 6. The implication raised by us derives considerable strength from this decision.

7. This implication is also considerably fortified if we examine the history of the legislation. The earlier Act of 1870 provided that compensation shall be fixed on the basis of the value at the time of paying compensation. When the present Act of 1894 came to be enacted, this basis was changed and it was provided in Section 23(1) that the date of Section 6 notification shall be the crucial date for determining compensation. This was again changed is 1923 when by an amendment of Section 23(1) the market value on the date of Section 4 notification was made the measure of compensation. This was done as Section 5A was then introduced for the first time in the Act and it was felt that the insertion of that section would create a time gap between Section 4 notification and the declaration under Section 6. The pre-supposition or assumption underlying the provisions of the Act was that but for the inquiry under Section 5A there would be very little time gap between the issue of Section 4 notification and the declaration under Section 6,

[3] AIR 1966 SC 1593

hardly leaving any scope for appreciation in price and the Legislature was therefore content, prior to the amendment of 1923, to fix the date of Section 6 notification as the crucial date for determining compensation. But when Section 5A was introduced by the amendment of 1923, there was bound to be some time gap by reason of the necessity of holding an inquiry and during the time gap, there might be appreciation in value consequent upon the land being notified under Section 4. The Legislature therefore with a view to excluding this appreciation in price on account of Section 4 notification, amended the statute and fixed the date of Section 4 notification as the crucial date for determining compensation so that the person whose land is to be acquired might not derive any benefit from the delay occasioned by the exercise of the right conferred for his benefit. No other delay apart from that which might be occasioned by the inquiry under Section 5A was contemplated by the Legislature and it was only in order to effect the appreciation in price which might take place during the period taken up by the inquiry under Section 5A that the Legislature altered the principle of compensation and based it on the market value at the date of Section 4 notification. The postulate of Sections 4, 5A and 6 therefore clearly was that the declaration under Section 6 must follow within a reasonable time after the issue of Section 4 notification. Indeed it could not be otherwise. In the year 1923 the Legislature could not have intended that for acquisition of his land, the owner should be paid compensation on the basis of market value at a date which might be indefinitely anterior to the date of acquisition. That might not in many cases give just equivalent of his land to the owner. We are speaking of a time long before the Fourth Amendment to the Constitution of India and at that time, it was regarded as a basic principle permitting the jurisprudence of every free society and recognized as a concomitant of all acquisition that acquisition can be made only for a public purpose and for an adequate compensation. Vide *State of Bihar v. Kameshwar Singh*[4], The Legislature could not have been unmindful of this principle when it made the amendment of 1923 and we must

presume that the Legislature could not have intended that an indefinite length of time may elapse between the issue of Section 4 notification and the declaration under Section 6 so that the owner of the land acquired may get compensation on the basis of the market value prevailing at a date long anterior to the date of acquisition which in many cases would not be "compensation", that is, just equivalent.

8. The requirement that the notification under Section 6 must follow within a reasonable time after the issue of Section 4 notification also emerges clearly from the scheme and language of Sections 4, 5A and 6. These sections are intimately connected and they form part of one integral scheme of acquisition. Section 4(1) authorizes the appropriate Government to notify that land in any locality is needed or is likely to be needed for any public purpose. The purpose of the notification under Section 4(1) is two-fold. One purpose is to enable the Government to take action under Section 4(2) in the matter of survey of land to decide what particular land out of the locality specified in the notification under Section 4(1) is suitable for the purpose for which acquisition is to be made and the other is to give opportunity to persons interested in the land in that locality to object to the acquisition under Section 5A. The objections are required to be filed within thirty days after the issue of a notification under Section 4 and the Collector has to give the objectors an opportunity of being heard either in person or by pleader and after considering all objections, the Collector has to make a report containing his recommendations on the objections to the appropriate Government. Vide Section 5A. The

[4] AIR 1952 SC 252

Government then finally decides these objections and makes up its mind as to what particular land out of the locality notified under Section 4 it requires and as soon as the Government has made up its mind, it issues a declaration to that effect under Section 6. The notification under Section 4, the inquiry and report under Section 5A and the declaration under Section 6 are thus three consecutive steps in an integrated process of acquisition and the sequence of these steps commencing from the notification under Section 4 and culminating in the declaration under Section 6 after inquiry and report under Section 5A unmistakably point to the conclusion that each step must lead on to the other within reasonable time. These three steps are integrally connected, each flowing out of the preceding and leading on to the next steps as parts of an integraied process and the implication is therefore irresistible that the process must be completed without unreasonable delay once it has started. There is also further internal evidence to show that the declaration under Section 6 must follow within reasonable time after the issue of Section 4 notification, leaving out of account of course the time taken up in the inquiry under Section 5A. The right conferred by Section 5A is not a right to a general inquiry; it is merely a right to file objections within thirty days from the date of issue of Section 4 notification and to be heard by the Collector in respect of such objections. The objections filed by persons interested in the land would therefore be confined only to the circumstances prevailing as at the date of filing of objections and the hearing by the Collector in respect of the objections as also the report made by him containing his recommendations on the objections would also similarly be based on the circumstances then existing. Now the Government is required to consider the report made by the

Collector before making up its mind to make a declaration under Section 6 because the report would bring to the notice of the Government the objections raised by persons interested in the land as also the then prevailing circumstances bearing on the question of acquisition of land and help the Government to make up its mind whether or not to make a declaration under Section 6. If an indefinite or unreasonable length of time were to elapse between the inquiry under Section 5A and the making of the declaration under Section 6, the whole object of Section 5A would be frustrated, for it is quite possible that by then the circumstances might have changed rendering the report of the Collector altogether unreal. It is no doubt true that even after the report of the Collector the Government can always make its own inquiry for the purpose of satisfying itself that any particular land is needed for a public purpose or for a company but the object of inviting objections, holding an inquiry and making a report under Section 5A would be frustrated if it were open to the Government to wait indefinitely after the submission of the report before making a declaration under Section 6. Implication must therefore necessarily arise that the declaration under Section 6 must be made within reasonable time after the issue of Section 4 notification. The time required for holding the inquiry and making the report under Section 5A would of course have to be taken into account in determining what is, in the circumstances of a given case, reasonable time. It is therefore clear, having regard to the scheme of Sections 4, 5A and 6, the nature of the power conferred under Section 6 and the consequences which flow from the exercise of the power, that the exercise of the power after an unreasonable length of time would be unreasonable exercise of power and therefore reasonable time limit must be imported in the exercise of the power as a matter of necessary implication.

9. The respondents sought to combat this conclusion by relying on Section 4 Sub-section (2) of the Land Acquisition (Amendment and Validation) Act. 1967. Section 4 Sub-section (2) provides that notwithstanding anything contained in Clause (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) of Section 4 of the principal Act, shall be made after the expiry of two years from the commencement of the Ordinance. The ordinance came into force from 20th January 1967 and therefore the effect of Section 4 Sub-section (2) was that, in respect of land notified under Section 4 prior to 20th January 1967, no declaration under Section 6 could be made after the expiry of two years from 20th January 1967. The argument of the respondents was that Section 4 Sub-section (2) postulated that whatever be the date on which Section 4 notification was issued, whether one year, five years or ten years before 20th January 1967, the declaration under Section 6 could be made any time after 20th January 1967 without any limit of time and it was precisely in order to restrict this unlimited power that Section 4 Sub-section (2) introduced a time limit of two years from 20th January 1967 within which declaration under Section 6 must be made. The respondents also contended that, in any event, Section 4 Sub-section (2) conferred power on the Government to make a declaration under Section 6 within two years from 20th January 1967 provided the notification under Section 4 was issued prior to 20th January 1967. Both these contentions are without force and must be rejected. As the Statement of Objects and Reasons

shows, the state of affairs which the Legislature found at the date of enactment of the Amending Act was that land acquisition proceedings were dragging on for an unduly long time and considerable time was being taken by the Government in making declaration under Section 6 after the issue of Section 4 notification. The Legislature finding that this state of affairs was oppressive and intolerable enacted inter alia Section 4 Sub-section (2) with a view to putting an end to this evil. The legislature was not concerned at that stage to inquire whether the action of the Government in making a declaration under Section 6 after a long period of time after the issue of Section 4 notification would be valid or not. There was no decided case on the point holding one way or the other. The Legislature therefore, instead of waiting for this question to be determined by the Courts, proceeded to set right this state of affairs by enacting that no declaration under Section 6 shall be made after the expiration of two years from 20th January 1967 in respect of land notified under Section 4 prior to that date. Section 4 Sub-section (2) cannot therefore assist in determining what is the true construction to be placed on Sections 4, 5A and 6. Even if we may assume that the Legislature did proceed on the assumption that the declaration under Section 6 could be made at any time after the issue of Section 4 notification, that cannot help the respondents for, as pointed out by Lord Atkinson in his speech in *Ormond Investment Co. Limited v. Belts*[5] "an Act of Parliament does not alter the law by merely betraying an erroneous opinion of it. "Legislation founded on a mistaken or erroneous assumption has not the effect of making that the law which The Legislature has erroneously assumed to be so. Moreover the object of enactment of Section 4 Sub-section (2) was to restrict the power of the Government to make a declaration under Section 6 and not to enlarge it. The language used by the Legislature is also restrictive in nature. It does not confer on the Government power to make a declaration under Section 6 which was not there before. Section 4 Sub-section (3) of the Amending Act was also relied upon on behalf of the respondents as indicating the Legislative assumption that declaration under Section 6 could be made at any time after the issue of Section 4 notification without any restriction of reasonable time but that sub-section does not carry the matter further than Sub-section

[5](1928) A.C. 143 at 164

(2) and what is said by us in reply to the contention based on Sub-section (2) would equally apply to repel the contention based on this sub-section.

10. The view which we are taking does appear to impose a limitation on the power of the Government to make declaration under Section 6 when apparently, on a plain literal construction, there is no such limitation. But rigid mechanical approach in such cases has always to be avoided. It would stifle the growth and development of the law in the right direction. If law can be made to accord with justice without doing violence to the language used by the Legislature, the Courts should not feel helpless; they are not powerless to do justice. To use the words of Lord Denning, "the judges should not be timorous souls", fearful of accepting a broad liberal interpretation. Moreover this view which we are taking has the merit of reconciling the requirement of public interest with the interest of the person who is being deprived of his land without his consent. The Government must, on the view taken by us, make a declaration under

Section 6 within reasonable time after the issue of Section 4 notification. If for any reason it fails to do so, its power to acquire the land for a public purpose is not lost. It can still issue another notification under Section 4 and proceed to acquire the land on the basis of such notification.

11. It is undoubtedly true that, on the view taken by us, where the exercise of the power to make a declaration under Section 6 is challenged on the ground of unreasonable delay, the Court will be called upon to consider whether the time that has elapsed between Section 4 notification and the declaration under Section 6 is reasonable or not. But that is not a task with which the judicial process is unfamiliar and there are numerous cases where the Courts have been called upon to adjudicate what is reasonable time on the facts of a given case. It may be that the Court may not be able to draw a precise line for the purpose of determining what is reasonable time for very often the question is one of degree but judicial experience has shown that it is always possible to say on which side of the line a particular case falls. So far as the present case is concerned, there can be no doubt, as we shall presently show, that it falls on the wrong side of the line. The notification under Section 4 was issued on 10th October 1952 and there after, on the objections being filed by the petitioners, there was an inquiry under Section 5A by the Special Land Acquisition Officer and a report was submitted by him containing his recommendations on the objections. This process was apparently complete before the beginning of August 1953, for the first Section 6 notification was issued by the Government on 14th August 1953. The petitioners challenged the validity of this Section 6 notification in Civil Suit No. 1262 of 1953 inter alia on the ground that in issuing it, the requirement of the proviso to Section 6(1) was not complied with by the Government. The respondents resisted the suit and contended that Section 6 notification impugned in the suit was valid and binding. The suit was fought through four Courts and ultimately by a judgment and decree dated 8th May 1963, the Supreme Court held that the impugned Section 6 notification was illegal and void inasmuch as it was issued without complying with the proviso to Section 6(1). It cannot therefore now be disputed, after the judgment of the Supreme Court, that there was no effective exercise of power under Section 6 when the Government issued the first Section 6 notification. The first Section 6 notification was nonest and it was only when the second Section 6 notification, which is the notification impugned in this petition, was issued by the Government on 19th October 1967 that there was an effective exercise of power under Section 6. There was thus a delay of about fifteen years on the part of the Government in issuing the notification under Section 6. The question is whether this delay can be regarded as reasonable on the facts and circumstances of the case.

12. The principal contention of the respondents was that the time spent in litigating the validity of the first Section 6 notification from the date of the filing of the suit upto 8th May 1963 when the Supreme Court finally adjudged the first Section 6 notification to be null and void could not be regarded as delay, since the Government had, according to the respondents, exercised the power under Section 6 by issuing the first Section 6 notification and they could not issue another notification under Section 6 unless the first Section 6 notification was judicially declared to be null and void. This contention sought to explain the delay of about eleven out of fifteen years but

in our opinion, there is no substance in it and it fails to convince us. There is no doubt that when the Government issued the first Section 6 notification, it was an ineffective exercise of power under Section 6 and yet the Government wrongly went on contending that it was a valid exercise of power. Can the Government then contend, when it is found to be wrong by the highest Court in the land, that the delay in the exercise of the power under Section 6 occasioned by its own wrong stand should be regarded as reasonable? If the Government had not persisted in wrongly asserting the validity of the first Section 6 notification and, accepting its invalidity, had cancelled it, the delay in the effective exercise of the power under Section 6 could have been avoided. The result of the wrong stand taken by the respondents was that about eleven years were taken up in litigation before the first Section 6 notification was declared null and void. The Government having adopted a wrong stand and thus taken up about eleven years cannot now be permitted to urge that the delay so occasioned should not be regarded as unreasonable. Moreover, it is difficult to understand what the Government was doing from the date of the Supreme Court judgment, that is, 8th May 1963, up to the beginning of 1965 when it made the Review Application before the Supreme Court. This period of about one year and nine months remains totally unexplained. How could it take such a long time for the Government to discover that the decree made by the Supreme Court did not accord with the judgment? If the Government discovered it earlier, why did they not move the Supreme Court immediately for correcting the decree? If the Government did not discover it until a little before the date of the actual application for review, what steps did they take in the meantime to proceed with the acquisition? These are questions to which no answer is furnished in the affidavit filed on behalf of the respondents. Then again, there was further delay after 13th September 1965 when the order was made by the Supreme Court correcting the decree. The contribution of Re. 1/- was sanctioned by the Government as late as 22nd February 1966 and the notice for filing objections was issued to the petitioners after a further delay of about three and a half months. We are not at all satisfied that the period of fifteen years which elapsed between the date "of Section 4 notification and the impugned Section 6 notification could be said to be reasonable time within which the impugned Section 6 notification could be validly issued by the Government. The impugned Section 6 notification would therefore have to be struck down as invalid.

13. We therefore allow the petition and make the rule absolute by issuing a writ of mandamus quashing and setting aside the notification dated 10th October 1967 issued by the Government under Section 6 of the Land Acquisition Act in so far as it affects the lands in the possession of the petitioners.

14. The respondents will pay the costs of the petition to the petitioners. The learned Counsel appear ing on behalf of the second respondent applies for leave to appeal to the Supreme Court under Article 133(1)(c) of the Constitution. Leave as applied for is granted.
Petition allowed.