GUJARAT HIGH COURT

Dosabhai Ratansha Keravala

Vs.

State of Gujarat

Spl. C.A. No. 316 of 1965 with Spl. C.A. No. 325 of 1965. and Spl. C.A. No. 811 of 1965

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

25.04.1969

JUDGMENT

P.N. Bhagwati, C.J.

1. These three petitions challenge the validity of notification dated 1st September 1964 issued by the State Government under Section 6 of the Land Acquisition Act, 1894, in respect of certain lands belonging to the petitioners. The facts are rather material and may be briefly stated as follows: The petitioners are owners of different pieces of land forming one compact block situate in village Vastrapur on the outskirts of Ahmedabad City. The third respondent society is co-operative housing society formed with the object of enabling its members to construct houses and registered under the Bombay Co-operative Societies Act, 1925 now deemed to be registered under the Gujarat Co-operative Societies Act, 1961. The petitioners' lands being well situated, the third respondent society moved the State Government to acquire the petitioners' lands for construction of houses by its members and the State Government accordingly issued a notification dated 19th June 1961 under Section 4 stating inter alia that the petitioners' lands were likely to be needed for a public purpose, namely, "for construction of houses for Manekbaug Co-operative Housing Society Ltd. ". Within thirty days of the issue of this notification, the petitioners filed their objections against the proposed acquisition of their lands and the Collector after holding an inquiry made his report to the State Government under Section 5A Sub-section (2). The State Government after considering the report issued a notification dated 5th January 1963 under Section 6, which, in so far as is material, was in the following terms:

> ".....whereas the Government of Gujarat is satisfied that the said lands are needed to be acquired at the expense of Manekbaug Co-operative Housing Society Ltd., Ahmadabad for the public purpose specified in column 4 of the Schedule hereto.

It is hereby declared under the provision of Section 6 of the said Act that the lands are required for the public purpose specified in column 4 of the Schedule hereto."
The public purpose specified in column 4 of the Schedule was "for a housing scheme undertaken by Manekbaug Co-operative Housing Society Ltd., Ahmedabad with the sanction of the

Government.". Though this statement of the public purpose in the notification dated 5th January 1963 was worded slightly differently from that contained in the notification dated 19th June 1961, the case of the respondents was that there was no difference in substance as the housing scheme referred to in the notification dated 5th January 1963 was a housing scheme for the members of the third respondent society and not for the public. The entire expense of the acquisition under the notification dated 5th January 1963 was to be borne by the third respondent society and a recital to that effect was therefore introduced in the said notification. But, on or about 12th February 1963, a resolution was passed by the State Government sanctioning a nominal contribution of Re. 1/- towards the cost of acquisition. The State Government thereafter by a notification dated 4th April 1963 cancelled the notification dated 5th January 1963 without giving any reasons or indicating the source of the power under which the cancellation was made. Nothing transpired thereafter for a long period of over a year until 25th June 1964 when another resolution was passed by the State Government in supersession of the earlier resolution dated 12th February 1963 and by this resolution, the State Government decided to contribute a sum of ₹ 500/- towards the cost of acquisition. This was followed by a notification dated 1st September 1964 issued by the State Government under Section 6. This notification was directed against the same lands as the earlier notification dated 5th January 1963 and was as follows:

> ".....whereas the Government of Gujarat is satisfied that the said lands are needed to be acquired at the public expense for the public purpose specified in column 4 of the Schedule hereto.

It is hereby directed under the provision of Section 6 of the said Act that the land are required for the public purpose specified in column 4 of the Schedule hereto.
The public purpose set out in column 4 of the Schedule was in identical terms as in the earlier notification dated 5th January 1963. The question which arises in these petitions is whether this notification is valid.

2. There are four main grounds on which the validity of the notification dated 1st September 1964 is challenged on behalf of the petitioners and they are:

> (A) When the notification dated 5th January 1963 (hereinafter referred to as the first Section 6 notification) was issued, the purpose of notification dated 19th June 1961 (hereinafter referred to as Section 4 notification) was exhausted and it could not thereafter be used to support the notification dated 1st September 1964 (hereinafter referred to as the second Section 6 notification). The cancellation of the first Section 6 notification by the notification dated 4th April 1963 did not have the effect of reviving the Section 6 notification so as to make it available for supporting the second Section 4 notification. The second Section 6 notification was, therefore, not supported by any notification under Section 4. The cancellation of the first Section 6 notification was in any event tantamount to withdrawal from acquisition and no subsequent notification under Section 6 could thereafter be issued without a fresh notification under Section 4.
> (B) The second Section 6 notification was not issued within a reasonable time after the issue of the Section 4 notification, or at any rate, within a reasonable time after the

submission of the report under Section 5A Sub-section (2) by the Collector and was consequently bad as being unreasonable exercise of power under Section 6.

(C) There was colourable exercise of power on the part of the State Government in issuing the second Section 6 notification in that:

(i) the State Government was first satisfied that the petitioners' lands were required for the third respondent society and it accordingly issued the first Section 6 notification but thereafter apprehending albeit wrongly that the acquisition might be invalid, it cancelled the first Section 6 notification and raking a complete summersault, issued the second Section 6 notification on the basis of a totally different satisfaction, namely, that the petitioners' lands were required for a public purpose, after making a nominal contribution of ₹ 500/- towards the cost of acquisition.

(ii) The purpose for which the acquisition was made, namely, construction of houses for members of the third respondent society, was ex facie a private purpose and what the State Government was satisfied about was therefore not a public purpose but a private purpose and the declaration contained in the second Section 6 notification was colourable as being outside the scope of the power conferred upon the State Government under the Act.

(D) The purpose for which the second Section 6 notification was issued was different from that set out in Section 4 notification and the second Section 6 notification was therefore invalid. We shall examine these grounds in the order in which they were pressed before us.

3. **Re: Ground (A):** This ground depends on the true construction of Sections 4, 5 A and 6 of the Act and on the connection between these provisions. It is evident from the scheme of the Act that the proceedings for acquisition begin with a notification under Section 4(1). That section authorises the appropriate Government to notify that the land in any locality is needed or is likely to be needed for a public purpose. There are two features of this notification which require to be noticed. The first is that this notification proceeds merely upon a prima-facie opinion-which has not yet ripened into satisfaction of the appropriate Government that land is needed or is likely to be needed for a public purpose and secondly, it is not necessary that the land needed should be particularized in this notification: it is sufficient if the locality in which the land is situate is mentioned. The reason is that the notification under Section 4(1) is an introductory measure of an explanatory character. The purpose of the notification under Section 4(1) is, as observed by the Supreme Court in *Babu Barkya Thakur v. State of Bombay*[1], "to carry on a preliminary investigation" with a view to finding out which particular land in the locality specified in the notification is adapted for the purpose for which acquisition is sought to be made, whether such purpose is a public purpose or a purpose of a company and if so whether land is needed for a public purpose or a company. The notification under Section 4(1) is also designed to give opportunity to persons owning lands in that locality to make objections under Section 5A. The objections may be directed towards showing that the purpose is not a public purpose or a purpose of the company or that the land is not suited for the purpose or that there is other suitable land available or that the land is not needed for the purpose and so on. The objections are considered by the Collector and after considering the objections he makes a report containing his

recommendations to the appropriate Government. On receipt of the report the appropriate Government has to give a decision on all the objections "at one stage" and after the objections are decided, the appropriate Government has to make up its mind and be satisfied "once for all" what

[1] AIR 1960 SC 1203

particular land out of the locality it wishes to acquire, whether the purpose for which the land is sought to be acquired is a public purpose or a purpose of a company and whether the land is needed for such public purpose or company. When the appropriate Government is so satisfied, it makes a declaration under Section 6 that the land is needed for a public purpose or a company. What was a mere proposal under Section 4 becomes the subject matter of a definite proceeding for acquisition under the Act. There is thus an intimate and integral connection between Sections 4, 5A and 6. As soon as the appropriate Government makes up its mind and is satisfied after carrying out preliminary investigation as envisaged in Section 4(2) and considering the objections of persons interested that a particular identifiable land is needed for a public purpose or a company and makes a declaration to that effect under Section 6, the purpose of the notification under Section 4 is carried out and fulfilled. The process initiated by the notification under Section 4 is complete on the issue of Section 6 notification and the notification under Section 4 having relived its purpose is exhausted. Thereafter what remains in the field is the notification under Section 6 which contains the firm and definite declaration of the appropriate Government that a particular identifiable land is needed for a public purpose or a company.

4. This view as to the effect of issue of Section 6 notification on the notification under Section 4 is clearly borne out by the decision of the Supreme Court in *State of Madhya Pradesh v. Vishnu Prasad Sharma*[2], There the question was whether piecemeal acquisition can be made by issuing successive notifications under Section 6 in respect of different parcels of land comprised in the same notification under Section 4. The notification under Section 4 was issued on 16th May 1949 in respect of lands situated in eleven villages including village Chhavni and it was followed by a number of notifications under Section 6 acquiring different pieces of land situate in village Chhavni and comprised in the notification under Section 4. On 12th August 1960 another notification under Section 6 was issued by the appropriate Government proposing to acquire 486.17 acres of land in village Chhavni. The petitioners challenged this notification in the Madhya Pradesh High Court and on the challenge being upheld, the State of Madhya Pradesh carried the matter in appeal before the Supreme Court. The principal contention urged on behalf of the petitioners 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 notification under Section 6 with respect to this village had been issued previously and could not support the issue of another notification under Section 6". This contention was upheld by the Supreme Court and Wanchoo J., speaking on behalf of himself and Mudholkar J. made certain observation which are very material and which in so many terms accept the construction which we are placing on Sections 4. 5A and 6. The learned Judge said:

> "Sections 4, 5A and 6 in our opinion are integrally connected Section 4 specified the locality in which the land is acquired and provides for survey to decide what particular land out of the locality would he needed Section 5A provides for hearing of objections to the acquisition and after these objections are decided the Government has to make up its mind and declare that particular land out of the locality it will acquire. When it has so

made up its mind it makes a declaration as

[2] AIR 1966 SC 1593

> 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, 5A 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 40) is at this stage over, and it may be said that it is exhausted after the notification under Section 6 if the Government required more land in that locality besides the 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 5A; 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, 5A 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, 5A 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 particularized but only the locality is mentioned; at the stage of Section 6 the land in the locality is particularized 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 particularizing the area out of the area in the locality specified in the notification under Section 4(1) is issued, the remaining non-particularized 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."

The learned Advocate General however sought to confine these observations to the facts of the case before the Supreme Court and urged that these observations were limited only to a case of piecemeal acquisition where successive notifications are issued under Section 6 in respect of

different parcels of land comprised in the same notification under Section 4 and they had no application where a notification under Section 6 is cancelled and a fresh notification under Section 6 is issued in respect of the same" land. The Supreme Court, he said, did not intend to lay down a general proposition that whenever a notification under Section 6 is issued whether in respect of the whole or a part of the land covered be Section 4 notification, Section 4 notification is exhausted in its entirety and ceases to be available altogether for issue of the subsequent notification under Section 6 but accepted only a limited proposition, namely, that when a notification under Section 6 is issued in respect of a part of the land covered by Section 4 notification, Section 4 notification is exhausted in respect of the balance of the land and cannot support a further notification under Section 6 with respect to such balance or, in other words, it cannot be used as a reservoir for drawing out land from time to time for supporting successive notifications under Section 6. We do not think this is a correct reading of the decision of the Supreme Court. It is no doubt true that the specific point raised before the Supreme Court was whether successive notifications can be issued under Section 6 in respect of different parcels of land comprised in the same notification under Section 4 and the observations of the Supreme Court also, therefore, made more particularly in reference to this point but the principle applied by the Supreme Court was a principle of general application based on a construction of Sections 4, 5A and 6, by no means confined to a case of piecemeal acquisition. The Supreme Court examined the scheme of the Act and on an analysis of the inter-relation between Sections 4, 5 A and 6 held that as soon as a notification under Section 6 is issued, the purpose of Section 4 notification is fulfilled and having served its purpose it is exhausted and cannot thereafter support any subsequent notification under Section 6. The Supreme Court did not say that Section 4 notification is exhausted only in respect of the balance of the land left out from the notification under Section 6. This decision of the Supreme Court therefore completely supports the view we are taking.

5. The learned Advocate General however contended that Section 4 notification was not exhausted in the present case as the first Section 6 notification was invalid and did not represent effective exercise of power under Section 6 and it could therefore be availed of for the purpose of supporting the second Section 6 notification. He urged that the cancellation of the first Section 6 notification by the notification dated 4th April 1963 was in recognition of the invalidity of the first Section 6 notification and since Section 4 notification was not exhausted by issue of a valid notification under Section 6, the Government could issue the second Section 6 notification on the basis of the existing Section 4 notification without the necessity of issuing a fresh notification under Section 4. In support of this contention he relied strongly on the decision of the Supreme Court in *Girdharlal Shodhan v. State of Gujarat*[3], Now there can be no doubt that if the first Section 6 notification is invalid, that is non est, Section 4 notification cannot be regarded as exhausted, for its purpose would yet be unfulfilled; its purpose could be fulfilled only by issue of valid notification under Section 6. The Government could doubtless in such a case cancel the first Section 6 notification in recognition of its invalidity and issue a second Section 6 notification. That is what happened in Ghirdharlal Shodhan's case. Bachawat J. speaking on behalf of the Supreme Court said: "where, as in this case, the notification under Section 6 is incompetent and invalid, the Government may treat it as ineffective and issue a fresh notification under Section 6". If, therefore, there was no effective exercise of power under Section 6 by issue of the first Section 6 notification, the Government could well issue another notification in exercise of the power under Section 6. But the question is, was the first Section 6 notification invalid: could it be said that it was ineffectual exercise of power under Section 6?

[3] AIR 1966 SC 1408 : VII GLR 957

6. Now on this question there is nothing in the affidavit of the Government beyond a bare averment that the first Section 6 notification was cancelled because it was found to be invalid. The affidavit does not disclose any grounds or reasons why, according to the Government, the first Section 6 notification was invalid nor does it allege any facts in support of the invalidity. The only ground which could therefore be urged on behalf of the Government for contending that the first Section 6 notification was invalid was that it was ex fade bad. The learned Advocate General contended that though the acquisition under the first Section 6 notification was an acquisition for a public purpose, the entire cost of acquisition was to come out of the fund of the third respondent society and the first Section 6 notification was therefore invalid as being in non-compliance with the proviso to Section 6. Now it can hardly be disputed in view of the decisions of the Supreme Court in *Zandu Lal v. State of Punjab*[4], and *R.L. Arora v. State of U.P*[5]., that having regard to the proviso to Section 6, a declaration for acquisition of land for a public purpose can only be made if the compensation to be awarded for it is to be paid wholly or partly out of public revenues or some fund controlled or managed by a local authority. The Government has no public purpose where the compensation is to be paid wholly out of the fund of a company which would include a co-operative society by reason of the definition of "Company" in Section 3 Sub-section (e). If therefore the first Section 6 notification in the present case contained a declaration for acquisition for a public purpose, it would clearly be invalid since entire compensation was admittedly to come out of the fund of the third respondent society. But we are not at all satisfied that the declaration in the first Section 6 notification was declaration for acquisition for a public purpose. It was, on a proper construction of the first Section 6 notification, a declaration for acquisition for the third respondent society which is company.

7. The question as to what is the true nature of the declaration-whether it is a declaration for acquisition for a public purpose or a declaration for acquisition for a company-depends primarily on the construction of the notification under Section 6. Now so far as the first Section 6 notification in the present case is concerned the declaration it contained was that the petitioners' lands were required for the public purpose specified in column 4 of the Schedule, that is, for a housing scheme undertaken by the third respondent society. It is no doubt true that the words used in the declaration were "for the public purpose" but the use of these words cannot be regarded as decisive of the question. Even where the acquisition is for a company, the purpose for which the acquisition can be made must be one falling within any one of the three clauses of Section 40 and this purpose, as pointed out by the Supreme Court in *Babu Barkya Thakur v. State of Bombay*[6], would clearly be a public purpose. It is therefore evident that whether the declaration is for a public purpose or for a company, the purpose for which acquisition is made would always be a public purpose and no inference can consequently be drawn from the mere use of the words "public purpose" that the declaration is for a public purpose and not for a company. The words "public purpose" are not inconsistent or incompatible with the acquisition being for a company and it would not therefore be right to place any undue reliance on the words "public purpose" in the first Section 6 notification. It may be noted that though the declaration in the notification begins by saying that the petitioners' lands are needed for a public purpose, it proceeds to specify what is the public purpose for which the petitioners' lands are needed namely, housing scheme of the third respondent society which, as we

[4] AIR 1961 SC 343 [6] AIR 1960 SC 1203

[5] AIR 1962 SC 764

have already said, is a company. The
declaration therefore does indicate that the petitioners' lands are needed for a company, namely, the third respondent society. It would thus appear that from the mere declaration that the petitioners' lands are needed for the public purpose specified in column 4 of the Schedule, namely, housing scheme of the third respondent society, it is not possible to conclude one way or the other whether the acquisition was for a public purpose or for a company. The declaration standing by itself is susceptible of both interpretations. That being so the source of the compensation furnishes a clue to determine the character of the acquisition. The recital in the first Section 6 notification shows and that was not disputed on behalf of the Government that the entire cost of acquisition was to come out of the funds of the third respondent society and if that be so, the acquisition could be valid only if it was for a company and not for a public purpose. Vide Jhandu Lal's case and R.L. Arora's case. Now it is a well settled rule of interpretation that if two constructions of an instrument are possible, we must adopt that which renders the instrument valid rather than the one which renders it invalid. We must read the instrument ut res magis valeat quam pareat so as to give it force and efficacy and not to render it defective or invalid. The acquisition under the first Section 6 notification must therefore be held to be an acquisition for a company and not for a public purpose. Moreover it may be noted that at the date when the Government issued the first Section 6 notification, Jhandu Lal's case was already decided by the Supreme Court and the Government therefore knew that it could not make an acquisition for a public purpose since the entire expense of acquisition was to be borne by the third respondent society: if such an acquisition was made, it would be invalid as being in non-compliance with the proviso to Section 6. It is difficult to believe that despite this knowledge the Government attempted to make an acquisition for a public purpose when it issued the first Section 6 notification. The Government could not have intended to exercise its power under Section 6 ineffectually or in vain. The presumption on the contrary would be that the Government intended to exercise its power effectively and therefore made a declaration for acquisition for a company and used the words "public purpose" only for emphasizing that the purpose of the company for which the acquisition was sought to be made was a public purpose. It is quite possible that having regard to the amendment made by the introduction of Clause (aa) in Section 40 Sub-section (1) after R.L. Arora's case (supra) the Government might have thought that acquisition for a co-operative society could now be made under Part VII of the Act as acquisition for a company. We must hold for those reasons that the acquisition under the first Section 6 notification was an acquisition for a company and not for a public purpose and it was not ex facie bad for non-compliance with the proviso to Section 6.

8. This view which we are taking as to the construction of the first Section 6 notification is completely supported by the decision" of the Supreme Court in *State of West Bengal v. P.N. Talukdar*[7], As a matter of fact, this decision is so much in point that it precludes us from taking a different view. The notification under Section 6 which was impugned in this case was in the following terms: "Whereas the Governor is satisfied that land is needed for a public purpose namely for the construction of staff quarters, hostel building and playground of Ramkrishna Mission... it is hereby declared that a piece of land comprising portion of cadastral plot No is needed for the aforesaid public purpose at the

[7] AIR 1965 SC 646

expenses of the Ramkrishna Mission ". The words used in the opening part of the recital were "public purpose" and the declaration contained in the impugned notification also stated that

"land... is needed for the aforesaid public purpose" (underlining is ours) and yet the Supreme Court held on a true interpretation of the impugned notification that the acquisition was not an acquisition for a public purpose but was an acquisition for the Mission which was a company within the meaning of the Act. Wanchoo J. speaking on behalf of the Supreme Court observed:

> "The notification here says that the land is needed for a public purpose, namely, for construction of staff quarters, hostel buildings and playground of Ramakrishna Mission at Narendrapur. Though therefore the notification begins by saying that the land is needed for a public purpose and does not say that it is needed for a company, it does specify for what particular purpose the land is needed, namely, for construction of staff quarters, hostel buildings and playground of the Mission which as we have already said is a company. The notification therefore does indicate that the land is needed for a company, though it does not say so in so many words. Finally, the notification says that the land is needed for 'the aforesaid public purpose at the public expense of the Ramakrishna Mission. 'We must say that this language is rather curious, for if the compensation was to be paid by the Mission it could not be at the 'public expense', and in any case the words 'the public expenses of the Ramkrishna Mission' are a contradiction in terms. The reasonable interpretation of these words therefore is that the acquisition will be at the expense of the Mission. This is borne out by the fact that the agreement under Section 41 which preceded the notification and which must precede it in view of Section 39 provides in Clause (1) thereof that 'all and every compensation in respect of the said land shall be paid by the Mission. 'There is no doubt that the notification under Section 6 is very clumsily drafted and we cannot fail to condemn such clumsy drafting where the notification is the basis of all subsequent proceedings. But on a fair and reasonable reading of the notification under Section 6 in this case there can be no doubt that it means that the land is required for a company (namely, the Mission) and that it is to be acquired at the expense of the company (namely, the Mission)."

These observations apply wholly and completely to the facts of the present case and compel us to hold that the acquisition under the first Section 6 notification was an acquisition for a company and not for a public purpose.

9. The learned Advocate General sought to combat the effect of the decision in Ramakrishna Mission's case by relying on the decision of the Supreme Court in *Shyam Behari v. The State of Madhya Pradesh*[8], But this case is clearly distinguishable from the present. The notification under Section 6 in this case declared that land was needed for public purpose, namely, "for the Premier Refractory Factory and work connected therewith" and the question was whether it was an acquisition for a public purpose or for a company. The Supreme Court held that it was an acquisition for a public purpose and not for a company and in reaching this conclusion the Supreme Court no doubt took into account the words "public purpose" but the presence of these words was not the main factor which influenced the decision of the Supreme Court. What weighed with the

[8] AIR 1965 SC 427

Supreme Court was "There is no mention of any company anywhere in this notification and it

cannot necessarily be concluded that the Premier Refractory Factory was a company, for a 'factory' is something very different from a 'company' and may belong to a company or to Government or to a local body or even to an individual. The mere fact that the public purpose declared in the notification was for the Premier Refractory Factory and work connected therewith cannot therefore lead to the inference that the acquisition was for a company". This decision cannot therefore help in the present case where the purpose declared in the first Section 6 notification was manifestly the purpose of the third respondent society.

10. Reliance was then placed by the learned Advocate General on Girdharlal Shodhan's case (supra). The first Section 6 notification in this case was almost in the same terms as the first Section 6 notification in the present case and the Supreme Court held that it contravened the proviso to Section 6 and was therefore invalid and of no effect. This decision would prima facie seem to support the argument of the learned Advocate General but if we read the decision closely, it is apparent that no argument was advanced in this case that acquisition was for a company and not for a public purpose. It seems to have been assumed that the acquisition was for a public purpose and on that hypothesis, the validity of the first Section 6 notification was examined by the Supreme Court and it was held to be bad as being in contravention of the proviso to Section 6. Since no point was raised that the acquisition was for a company and not for a public purpose and there was no decision on that point by the Supreme Court in this case, this decision cannot be regarded as an authority over-riding the effect of the decision in Ramakrishna Mission's case. Moreover, it is difficult to believe that a Bench of three Judges who decided Girdharlal Shodhan's case could have intended to over-rule what was laid down by the Full Court of five Judges in Ramakrishna Mission's case. We must therefore proceed on the basis that the first Section 6 notification was valid.

11. The question then arises: what was the effect of cancellation of the first Section 6 notification by the notification dated 4th April 1963? Now the power to cancel a notification under Section 6 must be conceded in view of the observations of the Supreme Court in paragraph 19 of the judgment of Wanchoo J. in Vishnu Prasad Sharma's case (supra). As observed by the learned Judge, under Section 21 of the General Clauses Act, 1897 "the power to issue a notification includes the power to rescind it" and therefore "it is always open to Government to rescind a notification under Section 4 or under Section 6". But this power does not include a power to rescind the notification with retrospective effect. Section 21 merely enacts a rule of interpretation. It does not confer any new power. All that it says is that where there is a power to issue a notification, it must be construed as also impliedly giving a power to cancel the notification. But the cancellation which is so authorized as a matter of statutory interpretation is prospective cancellation. Section 21 does not say expressly or by necessary implication that the power shall include a power to rescind with restrospective effect. This appears to be clear on a plain reading of the section but we find that there is also a decision of the Supreme Court where the same view has been taken. The Supreme Court pointed out in *The Straw Board Manufacturing Co. Ltd. v. G. Mill Worker's Union*[9],: 'it is true that the order of 26-4-1950 but, view of the absence of any distinct provision in Section 21 that the power of amendment and modification conferred on the State Government may be so exercised as

[9] AIR 1953 SC 95 at pages 97-98

to have retrospective operation the order of 26-4-1950, viewed merely as an order of amendment or modification, cannot, by virtue of Section 21, have that effect. If, therefore, the amending order operates prospectively, i.e. only as from the date of the order, it cannot validate the award...

". The first Section 6 notification could not therefore be cancelled with retrospective effect, and indeed, if we look at the notification dated 4th April 1963, it is clear that it did not even attempt to do so The cancellation of the first Section 6 notification was prospective: it took effect on the date on which it was made, namely, 4th April 1963. The first Section 6 notification was therefore not obliterated or wiped out altogether: it did not cease to exist ab initio as would have been the case if the cancellation had been retrospective in effect. It was valid when born and having spent a useful life of about three months it was killed by positive action in the shape of cancellation notification dated 4th April 1963. Now if the purpose of Section 4 notification was fulfilled and it was exhausted when the first Section 6 notification was issued and the first Section 6 notification was valid and effective and it continued to operate and hold the field until 4th April 1963 when it was cancelled with prospective effect, it is difficult to see how the same Section 4 notification could be utilized for supporting another Section 6 notification after the cancellation. The position might have been different if, contrary to what we have held, cancellation were retrospective so as to wipe out the first Section 6 notification altogether. The effect of retrospective cancellation would have been as if the first Section 6 notification were not issued at all and in that event it might have been possible to argue that the Government could issue a fresh Section 6 notification on the strength of the existing Section 4 notification. But here cancellation was prospective in operation and the first Section 6 notification continued to have valid existence upto the date of cancellation: the legal effect of exhaustion of Section 4 notification which flowed on issue of the first Section 6 notification was, therefore, not obliterated or set at naught. What really happened was that when the process initiated by Section 4 notification culminated in a firm declaration of acquisition under the first Section 6 notification, "a definite proceeding for acquisition" as pointed out by the Supreme Court in *Babu Barkya Thakur v. State of Bombay*[10], started and this acquisition proceeding would have resulted in completed acquisition if it had been "allowed to run its normal course but it was interrupted and put an end to by the cancellation notification. The cancellation notification being prospective in operation, what had gone before was not obliterated but only the future course of the acquisition proceeding was arrested-its future existence was annihilated. The particular acquisition under the declaration in the first Section 6 notification in which Section 4 notification had culminated was thus abandoned and given up: it was not pursued further and in effect and substance it was tantamount to withdrawal from that acquisition. This being the position, we fail to see how another Section 6 notification could be issued on the strength of the same Section 4 notification. The second Section 6 notification was therefore, unsupported by any notification under Section 4 and must on that account be held to be invalid.

12. The learned Advocate General however sought to sustain the validity of the second Section 6 notification by reference to Section 4(1)(a)(iii) of the Land Acquisition (Amendment and Validation) Act, 1967. This Validation Act was passed by Parliament with a view to saving piecemeal acquisitions made on the basis of a single Section 4 notification which were invalidated by the construction placed on Sections 4, 5-A and 6 by the Supreme Court in Vishnu Prasad Sharma's case (supra). Section 4(1)(a)(iii) provided that no acquisition made or purporting to have been made under the principal

[10] AIR 1960 SC 1203

Act before the commencement of the Validation Act and no action taken or thing done including any notification published in connection with such acquisition, shall be deemed to be invalid or ever to have become invalid merely on the ground "that one or more declarations have been made under Section 6 of the principal Act in respect of different parcels of the land covered by the same notification under Sub-section (1) of Section 4 of the principal Act. "This provision was

obviously intended to exclude a challenge of the kind dealt with in Vishnu Prasad Sharma 's case where a declaration under Section 6 is assailed on the ground that prior thereto, "one or more declarations" under Section 6 have been made in respect of "different parcels of land", that is, parcels of land different from that forming the subject matter of the impugned Section 6 declaration but covered by the same notification under Section 4. It has no application to a case like the present where a declaration under Section 6 is challenged on the ground that prior thereto, another declaration under Section 6 was already issued in respect of the same and not different parcel of land but was subsequently cancelled. This section cannot therefore avail the respondents to save the validity of the second Section 6 notification.

13. **Re: Ground (B):** The question whether the Government is bound to make declaration under Section 6 without unreasonable delay after the issue of Section 4 notification rests on a proper construction of Sections 4 5A and 6 in the context of the scheme of the Act. But this question is no longer open to doubt or debate at least so far as this Court is concerned. We have held in a judgment delivered on 18th March 1969 in *Velji Mulji Soneji v. State of Gujarat*[11] that a declaration under Section 6 in order to be valid must follow within a reasonable time after the issue of Section 4 notification. It, therefore, remains to be considered whether the time that elapsed between Section 4 notification and the second Section 6 notification in the present case could be regarded as reasonable on the facts and circumstances of the case. The notification under Section 4 was issued on 19th June 1961 and the second Section 6 notification on 1st September 1964 and there was thus an interval of about three years and two and a half months between the two notifications. We do not think this interval of time could be regarded as reasonable. The first Section 6 notification was issued on 5th January 1963 after holding the requisite inquiry and considering the report of the Collector under Section 5A Sub-section (2). This notification was, as pointed out above, valid and the Government could have proceeded to complete the acquisition under it but under a false sense of apprehension as to its invalidity the Government cancelled it on 4th April 1963. No further steps were thereafter taken by the Government to issue a fresh notification under Section 6 for a period of about one year and five months though a resolution contributing a sum of Re. towards the cost of acquisition was already passed by Government as far back as 12th February 1963. This delay of one year and five months was totally inexplicable. We may make some allowance for any further injury which the Government might have wished to make before issuing a fresh notification under Section 6 though there is no averment in the affidavit in reply in any of the petitions that any time was taken up in making any such further inquiry--but even so, a period of one year and five months can hardly be regarded as reasonable. The Government cannot be permitted to trifle with the property rights of the citizens. The second Section 6 notification must therefore be held to be invalid on this ground also.

14. **Re. Grounds (C) and (D):** The view we have taken as regards grounds (A) and (B)

[11] Special Civil Application No. 729 of 1968 IX G.L.R. 95

renders it unnecessary to consider the validity of grounds (C) and (D) though we may point out that so far as ground (D) is concerned, it is wholly without substance: it stands concluded against the petitioners by a decision of a Division Bench of this Court in *Girdharlal v. State of Gujarat*[12] Vide the observations of Shelat C.J. in paragraph 9 at page 531 of the report. The first limb of ground (C) is also unsustainable. We do not see why, if the purpose of the third respondent society also happens to be a public purpose, the Government should not be able to make a declaration for a public purpose by issuing a second Section 6 notification merely because it

originally thought of proceeding by way of acquisition for a company.

15. There would be nothing mala fide in doing so. The second limb of ground (C) raises a highly debatable question but we do not propose to consider it in these petitions as it is unnecessary to do so.

16. We, therefore, allow these petitions and make the rule in each petition absolute by issuing a writ of mandamus quashing and setting aside the notification dated 1st September 1964 issued by the Government under Section 6 of the Land Acquisition Act, 1894 in so far as it affects the petitioners' lands. The respondents will pay to the petitioners in each petition the costs of the petition.
Petitions allowed.
[12] VI G.L.R.569