
(1966) 09 BOM CK 0006

In the Bombay High Court

Case No : Special Civil Application No. 1098 of 1964

Bastyan Jao Patil

APPELLANT

Vs

The Special Land Acquisition Officer

RESPONDENT

Date of Decision : 27-09-1966

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 80

General Clauses Act, 1897 — Section 21

Land Acquisition Act, 1894 — Section 10, 11, 12, 13, 14

Citation : (1971) 73 BOMLR 643

Hon'ble Judges : S.P. Kotval, C.J; Bal, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

S.P. Kotval, C.J.—This is a petition challenging the proceedings taken for acquisition of the lands of the petitioner. The lands under acquisition are survey Nos. 34, H. No. 1, S, No. 35, H. No. 5, S. No. 35, II. No. 8 and portions of survey Nos. 53 and 52 in all admeasuring 8 acres and 21 gunthas situated at Panch Pakhadi in Taluka and District Thana. The circumstances which led to the filing of the petition are briefly stated as follows:-

A Notification u/s 4 of the Land Acquisition Act was issued on July 9, 1960 and published in the Government Gazette on July 21, 1960 with a view to acquiring land for a company, M/s. Voltas Limited. That notification was not on the record but we have allowed the petitioner to present a copy thereof in the course of the arguments before us. Objections were invited, u/s 5A, on July 25, 1960 and filed by the petitioner, on August 30, 1960. The petitioner was then heard and was himself present. This was on October 17, 1960. According to the notification the lands specified in the schedule were likely to be needed for the purposes of the company viz. for factory buildings. Since the acquisition was for a company an agreement as required by Section 39 of the Land Acquisition Act was to be entered into and such an agreement between the company and the Government

was entered into on February 3, 1961. Thereafter a notification was issued u/s 6 on March 24, 1961 followed by a notification u/s 9 issued on April 11, 1961. The petitioner put in his claim for compensation on August 2, 1961 and an award was made on September 8, 1962. By the award the compensation for the petitioner's land was assessed at Rs. 76,968.27 paise. The compensation assessed was not acceptable to the petitioner and so he asked for a reference u/s 18 of the Act. The reference was, asked for by the petitioner on October 11, 1962, but actually no reference came to be made because other events transpired in the meanwhile.

2. Before the award was made in the present case the decision of the Supreme Court in *R. L. Arora v. State of Uttar Pradesh* was declared on December 15, 1961. This case has been referred to in the arguments as the first Arora case, (there is also a second case of the same party which arose before the Supreme Court to which we shall presently refer), and we shall, therefore, refer to it also as such. The decision in the first Arora case placed a certain interpretation on the provisions of Section 40(1)(b) and Section 41(5) of the Land Acquisition Act reversing a decision of the Allahabad High Court. The view taken in that case was that in interpreting the words of Section 40(1)(i) the Court must take into account the 5th sub-clause of Section 41 and the two must be read together. So reading those provisions the Supreme Court held

What the provisions of sections 40 and 41 require is that the work should be directly useful to the public and the agreement shall contain a terra how the public shall have the right to use the work directly themselves". At page 771 of the Report, para. 14, the Supreme Court observed, "...Government has to take an agreement from the company, and that agreement must provide, where acquisition is needed for the construction of some work and that work is likely to prove useful to the public, the terms on which the public shall be entitled to use the work. These words can only mean that the public should have a right to use the work itself and not the product of it; and it is the duty of the Government when it takes an agreement u/s 41 to see that the public is so entitled to use the work. To say that the public is entitled to use the work because the public can go to the work in the way of business is in our opinion not giving any right to the public to use the work directly as such.

This important decision affected a large number of notices issued for acquisitions including the notice in the present proceedings. Upon the view taken in the first Arora case obviously the notification issued u/s 6 on March 24, 1961 could not have been upheld as valid.

3. On January 15, 1963 the petitioner himself gave a notice to Government u/s 80 of the CPC and in that notice he indicated that the entire proceedings were invalid and that the petitioner would proceed to file a suit for a declaration that the acquisition proceedings were void and illegal. He followed this up by further representations. On August 7, 1963 he wrote to the Government that they should order the Special Land Acquisition Officer to withdraw the land acquisition proceedings. The Government replied on September 3, 1963 that "necessary

proceedings will be undertaken by the Land Acquisition Officer, in this case in the light of the Land Acquisition (Companies) Rules, 1963. You may, therefore, raise your objections when called upon by the Land Acquisition Officer to do so". This reply did not satisfy the petitioner. He made a further application on October 25, 1963 to which he received a reply from the Government on November 27, 1963 that "the Special Land Acquisition Officer, Thana is being directed to start fresh proceedings in the matter from Section 4 notification onwards in view of the Land Acquisition (Companies) Rules, 1963. You may, therefore, approach that officer in the matter." Notwithstanding this reply from the Government on December 5, 1963 the petitioner wrote to the Commissioner of Bombay complaining that the Land Acquisition Officer was still proceeding further with the case and that he should be directed not to take possession of the lands. On March 11, 1964 he also wrote to the Chief Minister of the State threatening in that letter to sue the State for damages and on May 4, 1964 a similar letter was written to the Deputy Minister, Revenue Department.

4. On July 14, 1964 the present petition was filed in this Court and during its pendency on August 11, 1965 Government issued a notification u/s 6 of the Land Acquisition Act. It was stated before us by counsel for respondents that this fresh notification was issued because the previous notification u/s 6 was bad in view of the first Arora case and it must be ignored. This new notification, it is not disputed, is not with reference to any of the petitioner's lands, but is directed against properties of other persons found mentioned in the original notification u/s 4 published on July 21, 1960. This notification of August 11, 1965, it has been urged on behalf of the petitioner, now precludes Government from issuing any other notification under that section upon the ground that the notification u/s 4 has in consequence of the issue of the notification u/s 6 exhausted itself.

5. The several steps taken for the acquisition of the petitioner's lands after the decision in the first Arora case on December 15, 1961 are all being challenged before us. In the first place, it is urged that as a result of the decision in the first Arora case, all proceedings taken for the acquisition from the petitioner's lands became illegal and without jurisdiction and, therefore, the entire proceedings must be quashed. The answer made on behalf of the respondents to this contention is that only the notification u/s 6 would upon the view taken in that case be illegal but the first Arora case cannot in any way affect the notification u/s 4 originally published on July 21, 1960. On behalf of the petitioner it was further urged that although subsequent to the decision in the first Arora case the law came to be amended first by the promulgation of Ordinance No. 3 of 1962 on July 20, 1962, followed by the Land Acquisition Amendment Act 31 of 1962 which came into force on September 12, 1962 with retrospective effect from July 20, 1962, that is to say, from the date of the promulgation of the earlier Ordinance the provisions of the Amending Act were not attracted to the present case, because Section 7 of the Amending Act, it has been held by the Supreme Court applied only to completed acquisitions, i.e. acquisitions which had resulted in awards and the handing over possession of the lands to be acquired.

See R.L. Arora Vs. State of Uttar Pradesh and Others, . That is referred to hereafter as the second Arora case.

6. Next it was urged on behalf of the petitioner that quite apart from the effect of the first Arora case the notification u/s 4 published on July 21, 1960 was itself bad having regard to the provisions of Sections 40 and 41 of the Land Acquisition Act, particularly Section 40(1)(6) which was in force on the date on which the notification was published. This argument has been countered on behalf of the respondents by urging that ss. 40 and 41 are not relevant for consideration in judging the validity of notification u/s 4, for it has been urged that Sections 40 and 41 cannot apply to such a notification having regard to the provisions of Section 39 of the Act.

7. Fourthly it was urged on behalf of the petitioner that having regard to the provisions of Section 48 of the Land Acquisition Act, Government cannot withdraw piece-meal from an acquisition in the manner they have done. In other words, it was urged that they cannot withdraw only a notification u/s 6. Either they should withdraw from the entire acquisition as provided u/s 48 or not at all, the reason being that a notification u/s 9 has supervened as also a subsequent award on September 8, 1962. This point is met on behalf of the respondents by urging that all those proceedings were invalid and illegal having regard to the decision in the first Arora case and therefore nothing precludes Government from merely declaring that a notification which is already illegal, was illegal and recognising that fact.

8. Lastly it was urged on behalf of the petitioner as an alternative argument that assuming that the proceedings so far taken are valid, the requirements of Rule 4(ii) of the Land Acquisition (Companies) Rules, have not been complied with in so far as no previous negotiations were held with the company and that, therefore, the notifications issued under Sections 4 and 6 are both illegal and unjustified.

9. Now in the first place, turning to the effect of the decision in the first Arora case, reliance was placed on behalf of the petitioner by Mr. Tijoriwala on a passage to be found in para. 19 of the judgment at p. 773 of the report as follows:

.. .It has always been the case of the appellant that the consent given by the Government was not within the meaning of the relevant words in Sections 40 and 41 and therefore the entire proceedings for acquisition of the appellant's land must be quashed, for the conditions precedent for the issue of the notification u/s 6 had not been complied with. On that case the appellant must succeed, if we accept the meaning for which he contends, ...

It was urged that upon the interpretation which was to be placed on Sections 40 and 41 on behalf of the petitioner in that case an interpretation upon which the petitioner's case succeeded, the Supreme Court held that the entire proceedings for acquisition of the appellant's land must be quashed. Therefore, necessarily

the Supreme Court held that even the notification u/s 4 had failed in that case. Now no doubt the words which we have quoted may give the impression that (the entire proceedings for acquisition were quashed in that case, but we may point out that even in the passage quoted, the Supreme Court has given it as the reason that "the conditions precedent for the issue of the notification u/s 6 had not been complied with". In other words, all that the Supreme Court were concerned with was that Section 6 notification had not been complied with and indeed if one turns to the facts stated in paras. 1, 2 and 3, one finds it clear that the main attack in that petition was only against the notification u/s 6. In para. 1 we find that on July 5, 1956 the notification u/s 6 of the Act had been issued and it was only when the High Court quashed that notification on the ground of Sections 38 to 42 of the Act having not been complied with, that Government after complying with the provisions of Sections 38 to 42 issued on December 7, 1956 a fresh notification u/s 6 of the Act. In para. 3, the Supreme Court stated the point that was raised before it as follows (p. 766) :

It is not necessary to give in detail the grounds on which the notification of December 7, 1956 was attacked. It is enough to say that one of the grounds was that the notification was invalid as it was not in compliance with Section 40(1)(b) of the Act read with the fifth Clause of the matter to be provided in the agreement u/s 41.

and in para. 4 (p. 766) :

The only question that has been urged on behalf of the appellant before us is that the consent of the Government is being sought to be given to an acquisition for a company which is not in accordance with Section 40(J)(6) read with the fifth clause of the matters to be provided in the agreement u/s 41 and therefore the notification of December 7, 1956 is invalid.

(The italics are ours).

It is clear, therefore, that the only point which was argued before the Supreme Court was to attack the notification dated December 7, 1956 and that was & notification u/s 6 and nothing was in terms said about the notification u/s 4. The Supreme Court then proceeded to construe Section 40(1)(b) and as we have shown already in para. 14, the words of the section can only mean that the public should have a right to use the work itself and not the product of it and that, therefore, it was the duty of Government when it takes an agreement u/s 41 to ensure that the public is so entitled to use the work. Merely to ensure that the public has a right to go to the work in the way of business was not the same thing as giving a right to the public to use the work directly as such. In para. 5 at page 767 column 2, no doubt in comparing the provisions of Sections 4 and 6 the Supreme Court has said that the Words "public purpose" in those sections "have the same meaning" and that they have to be read in the restricted sense in accordance with Section 40 when the acquisition is for a company u/s 6." Thus though they showed the similarity of the meaning between the words used in the

two sections, it is clear even from this passage that they were considering only the attack against Section 6 in that case. Even in the concluding portion of the judgment the Supreme Court has stated "We therefore allow the appeal with costs and setting aside the order of the High Court quash the notification u/s 6 of the Act and the proceeding's resulting therefrom." Thus in terms the Supreme Court merely dealt with the attack against the notification u/s 6 and though the provisions of Section 4 were present to their minds they did not quash the notification under that section. If it had been their intention to say that upon the same reasoning by which they held that Section 6 notification was bad, the Section 4 notification was- also bad, we have no doubt that the Supreme Court would have so held. We cannot, therefore, construe the first Arora case to be an authority for the proposition which is canvassed before us that if a notification u/s 6 is bad, for non-compliance with the provisions of Section 40(1)(b) the precedent notification u/s 4 would ipso facto also be bad. As a matter of fact we shall presently show that it has been held that Section 4 notification has little to do with the acquisition proceedings as such and that the Section 4 notification is merely a preliminary or exploratory proceeding vis-a-vis the main proceeding for acquisition which commenced from the notification u/s 6.

10. Before we proceed to the other point in the case we may dispose of the provisions of Section 7 of the Amending Act 31 of 1962. On behalf of the respondents it was clearly stated by Mr. Sorabjee that he was not relying upon the provisions of Section 7 to save any part of the present proceedings. In the second Arora case the provisions of this section were invoked on behalf of the State to save the acquisition in that case but the Supreme Court after considering the effect of the word "acquisition" used in Section 7, held that before Section 7 of the Land Acquisition (Amendment) Act 31 of 1962 can validate an acquisition made before July 20, 1962 (the date of the Ordinance No. 3 of 1962) it must first be shown that the acquisition is complete and the land acquired has vested in Government. This means that the land acquired must have vested in the Government either u/s 16 or u/s 17(1) of the Land Acquisition Act. Thus Section 7 of the Amending Act validated only such acquisitions in which property had vested absolutely in the Government either u/s 16 or Section 17(1). Obviously in the present case the acquisition proceedings had not reached that stage. The possession of his lands is still with the petitioner. Section 7, therefore, cannot assist the respondents in justifying the present proceedings for acquisition of the petitioner's lands. The decision of the Supreme Court was followed in a recent judgment of the Gujarat High Court in Parshottam Veribhai Patel and Others Vs. State of Gujarat and Another, . In that case also possession had not been taken of the lands in question before July 20, 1962 and, therefore, it was held that Section 7 of the Amending Act would not apply.

11. Then we turn to the contention raised on behalf of the petitioner that the notification u/s 4 itself was bad for the reason that it had not complied with the provisions of Section 40(1)(b) which was in operation on the date on which it was promulgated. We have already referred to the interpretation placed upon the

provisions of Section 40(1)(b) by the first Arora case. The view there taken was that when Section 40(1)(b) lays down as a condition, which must be satisfied before the Government can grant consent to the agreement u/s 39, that such acquisition is needed for the construction of some work, and that such work is likely to prove useful to the public, what was meant by these words was that the public should have a right to use the work itself and not the product of it and that therefore it is the duty of the Government when it takes an agreement u/s 41 to see that the public is so entitled to use the work. The Supreme Court also pointed out that merely to say that the public is entitled to use the work because the public may go to the work in the way of business, is not sufficient and that it does not give any right to the public to use the work directly as such. When Section 40(1)(b) says that the work should be useful to the public it means that it should be directly useful to the public which should be able to make use of it. The Supreme Court illustrated the principle (p. 774) :

.. .What these provisions require is that the work should be directly useful to the public and the agreement shall contain a term how the public shall have the right to use the work directly themselves. It seems to us that under the relevant words in Sections 40(1)(b) and 41 it is works like a hospital, a public reading room or a library or an educational institution open to the public or such other work as the public may directly use that are contemplated...

12. Now what is urged is that upon that view the notification u/s 4 is patently bad because the notification dated July 9, 1960 says that "the lands specified in the schedule hereto are likely to be needed for the purposes of the "Company viz. for Messrs. Voltas Limited for Factory buildings." It is urged that "Factory buildings" cannot be directly used by the employees of the company or by any other member of the public except in the way of ordinary business. Section 40(1) opens with the words, "Such consent shall not be given unless the appropriate Government be satisfied, either on the report of the Collector u/s 5A, Sub-section (2), or by an enquiry held as hereinafter provided:-" and then follow the conditions (a), (aa) and (b). Now the words "Such consent" refer back to the consent contemplated by Section 39. Section 39 runs as follows:

The provisions of sections fl to 87 (both inclusive) shall not be put in force in order to acquire land for any Company, unless with the previous consent of the appropriate Government, nor unless the Compaq shall have executed the agreement hereinafter mentioned.

13. Thus "the previous consent" contemplated in Section 39 is referred to in Section 40(1) as "such consent", that is to say such consent as is referred to in Section 39. It is clear, therefore, that Section 40 is to be read subject to Section 39. Now Section 39 speaks of Sections 6 to 37 both inclusive and says that those sections shall not be put in force in order to acquire land for any Company unless the conditions specified therein are fulfilled. Therefore, it is only Sections 6 to 37 that would be governed by the subsequent provisions of Sections 40 and 41, We mention Section 4,1 here because it also refers back to Section 40. It is clear

from these provisions that a notification u/s 4 is not governed by the provisions of Section 40(1) and it is not necessary to ensure that the conditions required by Clauses (a), (aa) and (I) of Section 40(1) are fulfilled before the notification u/s 4 is issued. A perusal of Section 38(1) of the Act would also lead to the same conclusion. Section 38(1) provides that "The appropriate Government may authorise any officer of any Company desiring- to acquire land for its purposes to exercise the powers conferred by Section 4" and Sub-section (2) says that "in every such case Section 4 shall be construed as if for the words "for such purpose" the words "for the purposes of the Company" were substituted...". Now it is clear from the provisions of Section 38(1) that Section 4, as; we have said, is a sort of preliminary step assisting in the formation of the intention to acquire and does not form part of the acquisition proceedings as, such. It is only a company "desiring to acquire" land for its purposes that can claim the exercise of powers u/s 4 from the appropriate Government. Section 4 though referred to in Section 38(1), is not referred to in Section 39. Section 39 says "Sections 6 to 37 (both inclusive) shall not be put in force in order to acquire land..." thereby again implying that the acquisition of land truly commences with Section 6 and the process of acquisition begins and ends with Section 6 and Section 37 respectively. The deliberate omission to refer to it in Section 39 is, in our opinion, significant and the reason for its omission is clearly that Section 4 is only a preliminary step towards the commencement of acquisition proceedings which do not commence until the notification u/s 6 is issued.

14. In *Babu Barkya Thakur Vs. The State of Bombay and Others*, , the Supreme Court held (p. 140) :

... The purpose of the notification u/s 4 is to carry on a preliminary investigation with a view to finding out after necessary survey and taking of levels, and, if necessary, digging or boring into the sub-soil whether the land was adapted for the purpose for which it was sought to be acquired. It is only u/s 6 that a firm declaration has to be made by Government that land with proper description and area so as to be identifiable is needed for a public purpose or for a company. What was a mere proposal u/s 4 becomes the subject matter of a definite proceeding for acquisition under the Act. Hence, it is not correct to say that any defect in the notification u/s 4 is fatal to the validity of the proceedings, particularly when the acquisition is for a Company and the purpose has to be investigated u/s 5A or Section 40 necessarily after the notification u/s 4 of the Act.

No doubt, as observed in the same case at page 154, all proceedings in an acquisition begin with the Government notification u/s 4 to the effect that land in any locality is needed or is likely to be needed for any public purpose, but as has been indicated in the passage we have quoted above, that is only a tentative declaration necessary to be made in order to justify further acts of Government or its officers in going upon the lands of a citizen and making investigation or testing the land or taking samples of the land which in the absence of such a

notification would clearly amount to a trespass.

15. Reliance was placed by Mr. Tijoriwala on the decision in *State of M. P. v. V. P. Sharma* [1960] 2 S.C.J. 281 in this respect. At page 236 the Supreme Court has remarked that the process of acquisition always begins with a notification u/s 4(1). This decision as will appear from the subsequent passage is itself based upon the earlier decision of the Supreme Court in *Babu Barky* as case, which decision the Supreme Court has reaffirmed. They have further pointed out that a notification u/s 4 of the Act envisages a preliminary investigation and it is only u/s 6 that the Government makes a firm declaration. It is clear, therefore, that although no doubt Sections 4, 5A and 6 have to be read together, the effect of these sections is that action preliminary to acquisition is taken u/s 4 read with Section 5A, This preliminary action is taken with a view to enabling the Government to make up its mind whether it should acquire or not when the acquisition is for a public purpose and if so, what definite portion of the land notified u/s 4 should be acquired. Till then all that is done is that a piece of land is generally notified as likely to be required for a public purpose or for the purpose of a company and that decision may be implemented by acquisition or may not be implemented by acquisition. It is upon this view that a further premise is based in *State of Madhya Pradesh v. V. P. Sharma* that once a decision u/s 6 is taken, the notification u/s 4 works itself out. We shall advert to this principle a little later when we consider a further point argued by Mr. Tijoriwala. In view of this distinction the reason why Section 4 is not mentioned as one of the sections in Section 39 is, clear. Section 39 deals with the acquisition proceedings for a company and since Sections 4 and 5A do not deal with the acquisition as such it was not necessary to mention them in Section 39. Section 39 is not concerned with the preliminary stage leading upto acquisition and Sections 4 and 5A are such preliminary stages. Therefore, they do not find mention in Section 39.

16. With this analysis of the provisions of Chapter VII we turn to consider whether the Section 4 notification ought to be set aside in the present case at this stage. Now, there is no doubt or dispute here that respondent No. 2 for whom the acquisition is being undertaken is a company within the meaning of the Act, nor is there anything to show that the requirements of Section 4 by itself are not fulfilled. "What is urged is that the requirements of Chapter VII and particularly of Section 40(1)(b) have not been complied with. That is a matter which can still be cured after the petitioners' objections are heard u/s 5A for which notice has been issued. While we say this we must not be understood to hold that in no case can a notification u/s 4 be open to challenge even where the proposed acquisition is for a company. If the notification u/s 4 is for a company and if, for instance, it can be shown that it is not a company at all the party aggrieved can immediately challenge the notification. But such cases will of necessity be rare. We must also make it clear that whatever we have said is only with reference to acquisitions for companies contemplated in Chapter VII and because of the plain language of Section 39. The same consideration may or may

not prevail in case of acquisitions not falling under Chapter VII. Upon the facts of this case we hold that the present petition is premature.

17. A further point argued by Mr. Tijoriwala was that in the cases to which we have referred the notification u/s 6 was followed by the Section 4 notification, but in no case was an award actually made as has been done in the present case and he urged that the award cannot by unilateral decision of the State Government be set at naught and the acquiring authority be permitted to issue another notification u/s 6 at will. In the present case after the award was made on September 8, 1962, the subsequent notification was issued on August 11, 1965, upon the assumption that the previous proceedings were illegal and without jurisdiction upon the authority of the first Arora case and they could be validated u/s 7 of the Amendment Act. It is settled law that Government can withdraw a notification u/s 6 at any time, if it should come to the conclusion that the previous notification was: ineffective or invalid. In *Girdharilal Amratlal Shodan and Others Vs. State of Gujarat and Others*, the Supreme Court held,

.. .The Government had no intention of withdrawing from the acquisition. Soon after the cancellation the Government issued a fresh notification u/s 6. Where, as in the case, the notification u/s 6 is incompetent and invalid, the Government may treat it as ineffective and issue a fresh notification u/s 6. That is what, in substance, the Government did in this case.

In *Raja Harish Chandra Raj Singh v. The Deputy Land Acquisition Officer* [1962] 1 S.C.R. 670 the Supreme Court had occasion to consider the legal character of an award and they held at p, 681 that

In dealing with this question it is relevant to bear in mind the legal character of the award made by the Collector u/s 12. In a sense it is a decision of the Collector reached by him after holding an enquiry as prescribed by the Act, It is a decision, inter alia, in respect of the amount of compensation which should be paid to the person interested in the property acquired; but legally the award cannot be treated as a decision; it is in law an offer or tender of the compensation determined by the Collector to the owner of the property under acquisition.

They referred to the Privy Council case of *Ezra v. Secretary of State for India* I.L.R (1905) Cal. 605 : 7 Bom. L.R. 422. Upon this view it is clear that the mere fact that an award has supervened will not preclude Government from issuing a fresh notification u/s 6 if the conditions which we have indicated are satisfied. In the present case in view of the decision of the Supreme Court in the first Arora case the notification dated March 24, 1961 u/s 6 became illegal and that will have the inevitable effect of invalidating all subsequent proceedings. If there is no valid notification u/s 6 we think that the subsequent notification u/s 9 could not be issued much less could an award be made. Therefore, in the present case the award made on September 8, 1962 must be treated as illegal and without jurisdiction. If that be so, then nothing would prevent Government from issuing a

fresh notification u/s 6.

18. Then we turn to the argument based upon the provisions of Section 48 of the Land Acquisition Act. Section 48 prescribes that except in the case provided for in Section 36, the Government shall be at liberty to withdraw from the acquisition of any land of which possession has not been taken. The argument based upon this section is that after a notification is issued u/s 6, Government has made up its mind and its choice as to which land shall be taken in the acquisition proceedings and if then Section 9 notification is issued and an award made then the only manner in which the Government can, if it so desires, get rid of the proceedings is by withdrawing from the acquisition proceedings of the land altogether. Of course the condition that possession shall not have been taken is fulfilled in the present case and, therefore, Mr. Tijoriwala urged that the only action which the Government could take in the present case was u/s 48. A similar argument was advanced before the Supreme Court in the case which we have just referred to viz. *State of M.P. v. V.P. Sharma* and at p. 239 the Supreme Court held that apart from the provisions of Section 48 nothing precluded the Government from exercising the undoubted power by virtue of Section 21 of the General Clauses Act, for that section confers authority to rescind a notification if Government has the power to issue a notification. The argument was thus answered by the Supreme Court (p. 239) :-

...It is urged that the only way in which the notification u/s 4(1) can come to an end is by withdrawal u/s 48(1), We are not impressed by this argument. In the first place, u/s 21 of the General Clauses Act (X 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 u/s 4 or u/s 6, and withdrawal u/s 48(1) is not the only way in which a notification u/s 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 u/s 6.

In view of this pronouncement we are unable to accept Mr. Tijoriwala's contention that in the present case Government is concerned with Section 48 alone and all that it can do is to withdraw from the acquisition and it cannot cancel or treat as cancelled the notification u/s 6, In view of the first Arora case the notification u/s 6 was clearly illegal and without jurisdiction. Its effect would be that -the, subsequent proceedings would also be illegal and without jurisdiction. Therefore, there could be no question of withdrawal from an acquisition in such a case as contemplated in Section 48. What was a nullity cannot subsequently be withdrawn or cancelled. All that Government, therefore, did was to give effect to the Supreme Court decision and taking it for granted that the notification u/s 6 and the subsequent proceedings were all illegal it issued a fresh notification u/s 6 which it could issue at any time, a notification moreover which does not affect the petitioner's land.

19. Then we turn to another alternative argument. The first notification u/s 6

was issued on March 24, 1961 and the second notification on August 11, 1965 also u/s 6. The argument is that because of the issue of both these notifications u/s 6 the original notification published on July 21, 1960 u/s 4 had so to say worked itself out and therefore, a fresh notification u/s 6 could not now be issued and the only remedy which Government has is to issue a fresh notification u/s 4 itself if it desires to proceed with the acquisition. This is a point of substance, because if a notification u/s 4 were now to be issued, the petitioner would be entitled to have his land valued at a much higher rate in view of the prevailing higher land values. The argument in this regard is based upon the decision of the Supreme Court in *State of M.P. v. V. P. Sharma*. That was a case which went up to the Supreme Court from the decision of the High Court in Madhya Pradesh reported in *Vishnu Prasad Sharma and Others Vs. State of Madhya Pradesh and Others*, . In that case the facts were somewhat peculiar. A notification was issued u/s 4(1) of the Act on May 16, 1949. That notification declared that land in eleven villages including village Chhawani was likely to be needed for a public purpose viz. the erection of an iron and steel plant. Thereafter several notifications were issued in succession u/s 6 with respect to the villages notified in the notification u/s 4(1). Even as regards the village Chhawani the Government had issued a number of notifications u/s 6 for acquisition piece-meal of portions of that village. Then on August 12, 1960 another notification u/s 6 was issued proposing to acquire 486.17 acres of the same village Chhawani. The petitioners who were owners of that land moved the High Court challenging the validity of that notification, and the principal contention raised on their behalf was that the notification was void as it had not been preceded by a fresh notification u/s 4. In other words that the notification u/s 4(1) issued in 1949 had exhausted itself when the notifications u/s 6 were first issued and it could not support any other notification u/s 6. The Supreme Court observed that the power of acquisition was only an exercise of the power of eminent domain vested in the Government of the State and held that the provisions of the Act must be strictly construed. Then the Supreme Court discussed the several provisions of the Act and so far as Section 4 is concerned pointed out that the importance of the notification u/s 4 was that as soon as it was issued the land in the locality to which the notification applied was in a sense frozen. It was frozen in two respects, firstly, its market value had to be determined only as on the date of the notification u/s 4 and, secondly, that any expenditure or any subsequent outlay or improvements on or disposal of the land without the sanction of the Collector could not be taken into consideration for determining the compensation. Next it was pointed out that Sections 4, 5A and 6 were integrally connected and that as soon as Government has made up its mind what particular land of that locality would be acquired and issued a declaration u/s 6 the purpose of the notification u/s 4(1) is at that stage over and it may be said that it is exhausted after the issuance of the notification u/s 6. The Supreme Court observed (p. 237) :

... 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.,. The sequence of events from a notification of the intention to acquire u/s 4(1) to the declaration u/s 6 unmistakably leads one to the reasonable conclusion that when once a declaration u/s 6 particularising the area out of the area in the locality specified in the notification u/s 4(1) is issued, the remaining non-particularised area stands automatically released.

It is this last mentioned effect upon which Mr. Tijoriwala strongly relied. He urged that the moment the notification u/s 6 was issued in the present case on March 24, 1961, the notification u/s 4 exhausted itself and no subsequent notification u/s 6 could be issued unless another notification u/s 4(1) was first issued.

20. Now, it seems to us that in Vishnu Prasad's case all the notifications which were issued u/s 6 were valid and effective notifications. In other words, under each one of those notifications land came to be acquired and acquisition proceedings were made effective by the Government taking some land under each of those notifications and it is in the context of these facts that that case came to be decided. None of the notifications in that case were held or otherwise declared to be illegal and without jurisdiction as in the present case. What has happened in the present case is that though the Section 6 notification issued on March 24, 1961 appeared to be a valid notification, upon the decision of the Supreme Court in the first Arora case it was clearly an illegal notification without jurisdiction and could not possibly support the acquisition. It seems to us that to such a case the principle laid down by the Supreme Court in Vishnu Prasad's case cannot apply. Where no land could be acquired under the Section 6 notification, we doubt if the principle can apply that the Section 4 notification upon which it is based works itself out.

21. This was pointed out by the Supreme Court themselves in a recent decision in Oirdharilal v. State of Gujarat, a case to which we have already referred on another point. This was a case which went to the Supreme Court from a decision of a Division Bench of the Gujarat High Court in Girdharlal Amratlal Shodhan and Others Vs. State of Gujarat and Others, and that decision was affirmed by the Supreme Court. The facts in that case are stated in detail in the judgment of the High Court. A cooperative housing society consisting of some 13 Government servants of the Revenue Department of the Government of Gujarat had been formed and they applied to the Collector of Ahmedabad for acquisition of a plot of land for the purpose of a lay-out of tenements. A notification was issued u/s 4 on August 3, 1960. On the very same day the Land Acquisition Officer submitted a report to Government. An enquiry u/s 5A was held and on coming to a decision as contemplated by Section 5(2) Government entered into an agreement with the society on January 31, 1961. On July 18, 1961 the State Government issued a notification u/s 6 of the Act stating that the land was needed to be acquired at the expense of the society for a public purpose viz. the construction of houses for the society. At that stage, the owners of the land moved the High Court. While the petition was pending in the High Court the decision in the first, Arora case

was given and in view of that decision and realising that the notification u/s 6 dated July 18, 1961 was untenable the Government cancelled the said notification and on August 14, 1964 issued a fresh notification u/s 6 which was published in the Government Gazette on. August 28, 1964 without issuing a fresh notification u/s 4 or holding a fresh enquiry u/s 5A. It was this notification which was set aside by the Gujarat High Court and came up for consideration before the Supreme Court in the case referred to above. The main argument was that on the issue of the notification dated July 18, 1961 the power of the State Government to issue a notification u/s 6 was exhausted and they could not issue a fresh notification u/s 6. The Supreme Court rejected the contention by observing that "the notification dated July 18, 1961 was invalid.... By the issue of this notification, the Government had not effectively exercised its power u/s 6. In the circumstances, the Government could well issue the fresh notification u/s 6 dated August 14, 1964". The principle of that decision clearly applies to the present case so far as the notification dated March 24, 1961 is concerned.

22. In giving its decision the High Court of Gujarat referred to a decision of the Calcutta High Court in *Corporation of Calcutta Vs. Omeda Khatun Bewa*, , where it was held that

From the very nature of the case more than one award has to be made only in the two classes of cases i. e. (a) where the land in respect of which the declaration under S, 6 has been made is under the ownership of different individuals and (b) where the acquisition proceeding in respect of the declared land (whether under the ownership of a single or different individuals) is held up by circumstances over which the acquiring authority has no control e.g. by an injunction or the decision of a superior Court and that injunction is subsequently dissolved or the decision overruled.

It was held in that case that subject to these two exceptions, the ordinary rule was that there could be no piecemeal acquisition in respect of land for which a declaration has been made u/s 6 and the Act lends no countenance to the procedure of a portion of a holding, included in a declaration u/s 6 being acquired in the first instance and the remainder or a further portion being acquired at a future date at the option of the requiring or acquiring authority.

23. Mr. Sorabjee on behalf of the State relied upon these two exceptions to meet the second branch of the argument on this point viz. that Section 4 notification is exhausted because of the issue of the second notification u/s 6 issued on August 11, 1965. We will presently advert to that argument.

24. So far as the present contention is concerned, we hold that since the notification u/s 6 of March 24, 1961 was obviously an illegal and invalid notification in view of the decision in the first Arora case, nothing precluded Government from issuing a second notification. The view taken in *Vishnu Prasad*'s case that upon the issue of a notification u/s 6, the notification u/s 4 works itself out or is exhausted, is a view which can only apply where the

notification u/s 6 is a valid and an effective notification. We cannot extend the principle of that decision to an invalid notification u/s 6.

25. Then we turn to the other leg of the argument based upon the notification dated August 11, 1965. This petition was already filed on July 14, 1964 when that notification came to be issued. That notification is in respect of a part of the land notified in the Section 4 notification published on July 21, 1960. What is now urged, therefore, is that assuming that the notification dated March 24, 1961 was of no effect because it was an invalid notification at least the notification of August 11, 1965 was a valid notification and to that extent, therefore, the principle in Vishnu Prasad's case must apply and no further notification u/s 6 can issue in regard to the petitioner's lands as the respondents threaten to do. It is the contention on behalf of the petitioner that it should be declared that no such notification can now be issued.

26. The notification dated August 11, 1965 came to be issued under peculiar circumstances. The petition was already filed on July 14, 1964 when that notification was issued. Soon after it was filed the petitioner applied for an interim injunction and on August 5, 1964 this Court granted an interim injunction in terms of prayer (c) of the petition. Prayer (c) is as follows:

That pending the hearing and final disposal of this petition, the respondents, their servants and agents may be restrained by the order of this Honourable Court from proceeding with the said land acquisition proceedings.

27. Therefore, there was a complete stay of all further proceedings so far as the lands comprised in the present petition were concerned and those lands were, as we have already indicated at the outset, survey Nos. 34/1, 35/5, 35/8 and portions of survey No. 52 and 53 admeasuring in all 8 acres and 21 gunthas. On behalf of the respondents it has been contended and rightly contended in our opinion that because of the issue of this injunction it was impossible for the State Government even if it chose to exercise its power, to acquire the petitioner's land. Government could not take any proceedings for the acquisition of this land by the issue of a notification u/s 6 without committing a contempt of this Court. It was in those circumstances that the notification dated August 11, 1965 had to be issued. The respondents were compelled to issue an attenuated notification though their intention throughout had been to acquire also the land comprised in the present petition. In our opinion, this is a circumstance which would take the case out of the principle of the Supreme Court decision in Vishnu Prasad's case. After all a party cannot obtain an injunction from this Court in the exercise of its constitutional power and having obtained it, turn round and blame the opposite party for not taking the very action which was prohibited by the injunction. If the principle which the Supreme Court laid down is that upon the issue of the notification u/s 6, the notification u/s 4 exhausts itself, it was only based upon the principle that Government should make its choice once and for all and cannot make up its mind and exercise its choice piecemeal but where, as here, the choice is taken away from Government or its exercise is prohibited, we can see

no reason why that principle should still be allowed to prevail. The case, in our opinion, would clearly fall within the second exception contemplated in the Corporation of Calcutta's case which was referred to in the judgment of the Gujarat High Court in *Girdharilal v. State* and which decision was approved by the Supreme Court in *Girdharilal v. State of Gujarat*.

28. Secondly and here we come to the first exception referred to in *Girdharilal's* case. The present notification u/s 6 dated August 11, 1965 which, it is argued is so to say a bar against the issue of any further notification u/s 6, was not in respect of the lands of the petitioner. Under the notification u/s 4 issued on July 21, 1960 the lands of several parties were notified as being likely to be needed for the purposes of the respondents' factory. The notification of August 11, 1965 is in respect of the major part of the lands notified u/s 4 on July 21, 1960 excepting only the lands which were acquired by private negotiations by the respondents and one field survey No. 74, which had been acquired for a sister concern and the lands of the petitioner. It is clear, therefore, that the Government's intention throughout was to acquire the whole of this land and whatever is now left out is because they cannot exercise this choice in that respect. Now the first exception as contemplated in *Girdharilal's* case in the judgment of the Gujarat High Court is stated to be "where the land in respect of which the declaration u/s 6 has been made is under the ownership of different individuals". It is clear, therefore that the other notifications u/s 6 were in regard to the lands of persons other than the present petitioner. To that extent also the subsequent notification u/s 6 would now be justified. We cannot, therefore, grant the declaration asked for on behalf of the petitioner,

29. Lastly, it was urged on behalf of the petitioner that assuming that the notification u/s 4 is otherwise a valid notification, it is bad because the rules framed u/s 55 of the Land Acquisition Act have not been complied with. Reference was made to rule 4(2) of the Rules for the guidance of the officers of the Central Government u/s 55. Rule 4(1) requires that the several conditions must be fulfilled whenever a company makes an application for acquisition of any land before the Government makes a declaration u/s 6, i.e. (i) that the company has made its best endeavour to find out lands in the locality suitable for the purpose of the acquisition and (ii) that the company has made all reasonable efforts to get such lands by negotiation with the persons interested therein on payment of a reasonable price and such efforts have failed. We are not sure whether these Rules; would possibly apply prior to the issue of a notification u/s 4. In fact from a recent decision of a single Judge of this Court it is clear that they apply at a stage subsequent to the issue of a notification u/s 4. In *India Finance and Construction Co. Pvt. Ltd. v. Kamlakar Thakur* (1905) Miscellaneous Petition No. 444 of 1963, decided by Mody J., on November 26, 1965 (Unrep.) Mr. Justice Mody dealing with these Rules held

Acquisition proceedings are initiated by a notification u/s 0 and not by that u/s 4. The object of Section 4 notification is only exploratory. It does not initiate

acquisition proceedings. That is the conclusion which is reached by examining the provisions of the Land Acquisition Act itself. But apart from it the provisions of this rule 4 themselves show that the phrase "before initiating acquisition proceedings" does not mean before Section 4 notification, but that it only means before the notification u/s 6... It is therefore clear that even on the provisions of rule 4 itself, the words "before initiating acquisition proceedings" refer to the notification u/s 6 and not to the notification u/s 4. As rule 4 does not lay down that any steps should be followed before issuing a notification u/s 4, this ground of attack fails.

In our opinion, this is a complete answer to the argument now advanced.

30. But apart from this there is in the present case even stronger ground and that is that notification u/s 4 was issued as far as in July 1960 and the Rules had come into force on June 24, 1963. Therefore, if the rules came into force after the issue of the, notification u/s 4, no question of their application to the present case arises and no question of non-compliance with those rules can possibly arise. See *Mangalbai v. State* (1903) 5 Guj. L. R. 320, para. 25.

31. These were all the objections raised against the notification u/s 4 in the present case and the grounds for urging that no fresh notification u/s 6 could issue at the instance of the State Government. In our opinion, none of these grounds are entitled to succeed. We uphold the validity of the notification u/s 4 dated July 9, 1960 (published on July 21, 1960). The State Government may take such further steps as they choose in the matter of acquisition of the petitioner's lands.

32. Upon this view it is unnecessary to consider the preliminary objections which Mr. Sorabjee raised. These objections were firstly that the petitioner has misstated and misrepresented facts and has not been candid with the Court and, therefore, the petition should be dismissed. Secondly, it is stated that there has been inordinate delay in applying to this Court. Thirdly, that in any event the petition was premature. Since we are dismissing the petition on merits we do not think that we should deal with any of these preliminary objections separately. We dismiss the petition with costs. The matter has been argued at great length and the issues arising were of a complicated nature. The arguments took the better part of about eight days. In view of this we accede to the prayer made on behalf of the respondents for awarding a higher fee under rule 5, Chapter 14 of the Appellate Side Rules. In all the circumstances we think that a fixed sum of Rs. 250 should be paid. In fixing- this amount we have taken into consideration the fact that by an earlier order of April 27, 1966 the petitioner was ordered to pay the costs of Rs. 500. This amount will be in addition. One set of counsel allowed. Liberty to withdraw the sum deposited by the petitioner.