

(1969) 04 GUJ CK 0005

In the Gujarat High Court

Case No : Special Civil Application No's. 564 of 1962, 1100 of 1963, 1441 of 1966 and 218 of 1968

Doongarsee and Sons and Others

APPELLANT

Vs

State of Gujarat and Others

RESPONDENT

Date of Decision : 25-04-1969

Acts Referred:

Constitution of India, 1950 — Article 226

Land Acquisition Act, 1894 — Section 4, 48(1), 6, 9

Citation : AIR 1971 Guj 46

Hon'ble Judges : P.N. Bhagwati, C.J;N.K. Vakil, J

Bench : Division Bench

Advocate : V.S. Parikh, S.B. Vakil and A.H. Mehta and Attorney General, for the Appellant; J.M. Thakore, General and Addl. Govt. Pleader and M.C. Nanavati, for the Respondent

Judgement

Bhagwati, C.J.—The petitioners are owners of different pieces of land forming one compact block situate at village Vasana, City Taluka, Ahmedabad District. The third respondent society is a 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 situate, 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 20th May, 1961 u/s 4 stating inter alia that the petitioners' lands were likely to be needed for a public purpose, namely, for construction of houses for members of Shri Yogeshwar Co-operative Housing Society Ltd. Within thirty days of the issue of this notification some of 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 u/s 5-A, sub-section (2). The petitioners who are owners of survey Nos. 7, 8, 14 and 17, apprehending that the State Government will immediately

proceed to issue a notification u/s 6 in respect of their lands thereupon filed Special Civil Application No. 564 of 1962 challenging the power of the State Government to acquire for construction of houses for members of a co-operative housing society and seeking to restrain the State Government from proceeding further under the notification dated 20th May, 1961. On the petition being admitted an interim injunction was sought but it was refused and the State Government after considering the report of the Collector u/s 5-A, sub-section (2), issued a notification dated 29th April, 1963 u/s 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 public expense for the public purpose specified in column 4 of the Schedule hereto.

It is hereby declared under the provisions 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 was "for a Housing Scheme under taken by Shri Yogeshwarnagar Co-operative Housing Society Limited, Ahmedabad, with the sanction of the Government." Though this statement of the public purpose in the notification dated 29th April, 1963 was worded slightly differently from that contained in the notification dated 20th May, 1961, the case of the respondents was that there was no difference in substance as the housing scheme referred to in the notification dated 29th April, 1963 was a housing scheme for the members of the third respondent society and not for the public. It may be stated here that prior to the issue of the notification dated 29th April, 1963, a resolution dated 21st December, 1962 was passed by the Government sanctioning a nominal contribution of Re. 1/- towards the cost of acquisition and that is why the recital in the said notification stated that ".....the said lands are needed to be acquired at the public expense". Notices u/s 9, sub-section (1) were thereafter served on the petitioners and the Special Land Acquisition Officer after holding the requisite inquiry made an award dated 21st December, 1963 determining the amount of compensation payable to the petitioners in each of these petitions. Possession of the respective lands was then demanded by the Government from the petitioners. The petitioners who are owners of Survey Nos. 7 to 9, 12 to 17 and 19 to 22 thereupon preferred Special Civil Application No. 1100 of 1963 challenging the validity of the notification dated 29th April, 1963. Nothing transpired thereafter until 15th April, 1966 when the Government, in supersession of the earlier notification dated 21st December, 1962, passed another resolution sanctioning a contribution of Rs. 500/- towards the cost of acquisition. The Government then by a notification dated 28th April, 1966 cancelled the notification dated 29th April, 1963 without giving any reasons or indicating the source of the power under which cancellation was made. This was followed by a fresh notification dated 6th June, 1966 issued by the State Government u/s 6. This notification was directed against the same lands and was

in identical terms at the earlier notification dated 29th April, 1963. The petitioners in Special Civil Application No. 564 of 1962 thereupon, with leave of the Court, amended the petition so as to include challenge to the validity of this notification. The petitioners in Special Civil Application No. 1100 of 1963 however did not amend the petition but instead filed a new petition, being Special Civil Application No. 218 of 1968. The other petition filed in this group was Special Civil Application No.1441 of 1966. We have thus a group of four petitions. Special Civil Application No. 1100 of 1963 being directed against the notification dated 29th April, 1963 and the other three petitions, namely, Special Civil Applications Nos. 564 of 1962, 1441 of 1966 and 218 of 1968, being directed against the notification dated 6th June, 1966.

2. So far as Special Civil Application No. 1100 of 1963 is concerned, the petition challenges the notification dated 29th April, 1963 but since this notification has been cancelled by the Government by the notification dated 28th April, 1966, the petition has become infructuous and does not survive. In fact this is the contention raised on behalf of the respondents in answer to the petition. B.S. Nimbalkar, Under Secretary to the Government of Gujarat, Revenue Department, states in his affidavit in reply at paragraph 5; "I say that the petition of the petitioners has become infructuous inasmuch as the Government of Gujarat has by a notification dated 28th April, 1966, bearing No. M.1491/M/LAH.1561/30027/LA.IV, published in Gujarat Government Gazette Part I (Supplement) dated 5th May, 1966 at page 2169, cancelled the earlier notification dated 29th April, 1963 which has been challenged in the petition." This petition must therefore be rejected and nothing more need be said about it.

3. Turning to the other three petitions, the main grounds on which the validity of the notification dated 6th June, 1966 is challenged on behalf of the petitioners may be summarised as follows:

(A) - When the notification dated 29th April, 1963 (hereinafter referred to as the first Section 6 notification) was issued, the purpose of the notification dated 20th May, 1961 (hereinafter referred to as the Section 4 notification) was fulfilled and it was exhausted and it could not thereafter be used to support the notification dated 6th June, 1966 (hereinafter referred to as the second Section 6 notification). The cancellation of the first Section 6 notification by the notification dated 28th April, 1966 did not have the effect of reviving the Section 4 notification so as to make it available for supporting the second Section 6 notification. The second Section 6 notification was therefore not supported by any notification u/s 4. The cancellation of the first Section 6 notification was in any event tantamount to withdrawal from acquisition and no subsequent notification u/s 6 could thereafter be issued without a fresh notification u/s 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 u/s 5-A sub-section (2) by the Collector and was consequently bad as being unreasonable exercise of power u/s 6.

(C) - The purpose of which the second Section 6 notification was issued was different from the set out in the Section 4 notification and the second Section 6 notification was therefore invalid.

(D). - The second Section 6 notification was issued mala fide in that it was issued at the instance of Shri Mohanlal Vyas who was a Minister in the Government of Gujarat at the relevant time with a view to obliging him.

(E). - 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.

We shall deal with these grounds in the order in which we have set them out above.

4. Re. Ground (A): This ground is covered by a decision given by us this morning in Special Civil Applns. Nos. 316, 325 and 811 of 1965 (Guj). The facts giving rise to this group of petitions were similar to the facts of the present case. There was a notification dated 19th June, 1961 issued by the Government u/s 4 and this was followed by a notification dated 5th January, 1963 issued by the Government u/s 6 declaring that certain lands were needed to be acquired at the expense of Manekbag Co-operative Housing Society Ltd. for a public purpose, namely, "for a housing scheme under taken by Manekbag Co-operative Housing Society Ltd. with sanction of Government". This notification u/s 6 was subsequently cancelled by the Government by a notification dated 4th April, 1963 and the Government then issued a second notification dated 1st September, 1964 u/s 6 in respect of the same lands after passing a resolution sanctioning a contribution of Rs. 500/- towards the cost of acquisition. The second Section 6 notification was challenged in these petitions inter alia on the ground that Section 4 notification was exhausted on issue of the first Section 6 notification and it could not thereafter support any subsequent notification u/s 6 even if the first Section 6 notification was cancelled and there was therefore no notification u/s 4 to support the second Section 6 notification. This challenge was upheld by us for reasons which we stated in the following words -

"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 u/s 6, the purpose of the notification u/s 4 is carried out and fulfilled. The purpose initiated by the notification u/s 4 is complete on the issue of Section 6 notification and the notification u/s 4 having served its purpose is exhausted. Thereafter what remains in the field is the notification u/s 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.....As soon as a notification u/s 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 u/s 6.....

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 u/s 6 must be conceded in view of the observations of the Supreme Court in paragraph 19 of the judgment of Wanchoo J. in *State of Madhya Pradesh and Others Vs. Vishnu Prasad Sharma and Others*, . As observed by the learned Judge, under S. 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 u/s 4 or u/s 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 authorised as a matter of statutory interpretation is prospective cancellation. Section 6 does not say expressly or by necessary implication that the power shall include a power to rescind with retrospective 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 *Strawboard Manufacturing Co. Ltd. Vs. Gutta Mill Workers' Union*, . "It is true that the order of 26-4-1950 does "ex facie" purport to modify the order of 18-2-1950 but, in 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 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 utilised 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 Vs. The State of Bombay and Others*, , 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 u/s 4 and must on that account be held to be invalid".

These observations apply wholly and completely to the facts of the present case for here also the first Section 6 notification was a valid notification u/s 6 and it was subsequently cancelled by the notification dated 28th April, 1966 and then the second Section 6 notification was issued on 6th June, 1966. As a matter of fact the present case is much stronger for in the earlier petitions an argument could plausibly be raised on behalf of the State - though it was ultimately rejected - that the first Section 6 notification was invalid and the cancellation was made in recognition of its invalidity but no such argument is possible in the present case and indeed it must be said in fairness to the learned Advocate General that he did not even attempt to make such argument. The reason is obvious. Prior to the issue of the first Section 6 notification a resolution dated 21st December, 1962 was passed by the Government sanctioning a nominal contribution of Re. 1/- towards the cost of acquisition and it was therefore recited in the said notification that ".....the said lands are needed to be acquired at the public expense". The declaration also stated that "the lands are required for the public purpose specified in column 4 of the Schedule". The acquisition was therefore clearly an acquisition for a public purpose and not for a company and

since by reason of the resolution dated 21st December, 1962 a part of the compensation was to come out of public revenues, it was a valid exercise of power u/s 6. That was in fact the stand taken by the Government itself in the affidavit of B.S. Nimbalkar filed in reply to the petition in Special Civil Application No. 1100 of 1963. B.S. Nimbalkar stated in this affidavit which was made as late as 10th February, 1967 long after the first Section 6 notification was cancelled and the second Section 6 notification was issued: "I deny that the notifications" (reference here being to the notification u/s 4 and the first Section 6 notification) "are in contravention of the provisions of any of the sections of the said Act. I also deny that they are illegal, bad or void on any of the allegations and submissions contained in this paragraph. It is true that the acquisition does not proceed under Part VII of the Act". Vide paragraph 12 of the affidavit. He also asserted on behalf of the Government in paragraph 14 of the affidavit, "I say that there is Government contribution as stated in the earlier portion of this affidavit. I therefore deny that there is no compliance with the provisions of Section 6 (1) of the said Act". But apart altogether from these statements in the affidavit the learned Advocate General also, as pointed out above, did not contend that the first Section 6 notification was invalid. We must therefore proceed on the basis that the first Section 6 notification was valid and if that be so, our decision in Special Civil Applns. Nos. 316, 325 and 811 of 1965 (Guj) directly covers the present case.

5. The learned Advocate General however sought to distinguish this decision by pointing out that the cancellation notification in that case was issued before any notices u/s 9 sub-section (1) were served on the petitioners while in the present case the cancellation notification was issued after the Collector had taken orders for acquisition and notices u/s 9, sub-section (1) were served on the petitioners and this constituted a vital difference between the two cases. He pointed out that, according to the observations of the Supreme Court in paragraph 19 of the judgment in State of Madhya Pradesh and Others Vs. Vishnu Prasad Sharma and Others, , the power of cancellation implied u/s 21 of the General Clauses Act, 1897, could be exercised only before issue of notices u/s 9 sub-section (1): once the proceeding for acquisition had gone beyond the stage of issue of notices u/s 9, sub-section (1), the Government could no longer cancel the notification u/s 6 in exercise of power under S. 21 of the General Clauses Act, 1897 and the only power which could then be exercised by the Government was the power to withdraw the acquisition u/s 48 sub-section (1). He urged the notification dated 28th April, 1966 having admittedly been issued long after service of the notices u/s 9 sub-section (1) could therefore be justified only if it represented exercise of power u/s 48 sub-section (1) but the language of that notification as also the conduct of the Government showed that the power exercised was one of cancellation u/s 21 of the General Clauses Act, 1897 and not of withdrawal u/s 48, sub-section (1). The cancellation purported to be effected by the notification dated 28th April, 1966 was therefore invalid and ineffective and the first Section 6 notification continued to be in force and the Government was entitled to

proceed further with the acquisition under that notification. This argument of the learned Advocate General involved a concession that the second Section 6 notification was invalid and if accepted, would straightway result in the present petitions except Special Civil Application No. 1100 of 1963 being allowed in favour of the petitioners but we do not think it is open to the learned Advocate General to advance this argument.

6. This argument is plainly contrary to the stand taken up by the respondents in the affidavits filed in reply to the petitions. It is nowhere the case of the respondents in any of the affidavits that the cancellation of the first Section 6 notification was invalid and ineffective and the first Section 6 notification therefore continued to be in force. As a matter of fact, in answer to Special Civil Application No. 1100 of 1963 which challenges the first Section 6 notification the argument of the respondents as set out in the affidavit in reply filed by B.S. Nimbalkar was that the first Section 6 notification having been cancelled by the notification dated 28th April, 1966, the petition has become infructuous and should therefore be dismissed in limine without going into the question of validity of the first Section 6 notification. This argument clearly postulates that the first Section 6 notification was validly cancelled by the Government on 28th April, 1966. We may point out that in fact we have accepted this argument and dismissed Special Civil Application No.1100 of 1963 in limine on the ground that by reason of the cancellation of the first Section 6 notification it has become infructuous and does not survive. So also in answer to the other three petitions which challenge the validity of the second Section 6 notification, the respondents in their affidavits in reply do not concede that the second Section 6 notification is invalid which would be the logical consequence of accepting the present argument of the learned Advocate General but they seek to support the validity of the second Section 6 notification. Their whole case in the affidavits is that the first Section 6 notification was invalid - cancellation being only in recognition of its invalidity - and the second Section 6 notification could therefore be validly issued on the basis of the existing Section 4 notification. The petitions and the affidavits proceed upon a common basis that the first Section 6 notification is no longer in force: according to the petitioners it is not in force because it was cancelled by the notification dated 28th April, 1966: according to the respondents it is not in force because it was invalid and therefore void ab initio. The respondents cannot, in view of this state of the pleadings, be now permitted to take a complete somersault and to adopt a stand wholly contradictory to that taken by them in the affidavits. We must accordingly refuse of countenance the argument of the learned Advocate General that the cancellation of the first Section 6 notification was invalid and ineffective and the first Section 6 notification therefore continued to be in force.

7. But even if this argument were permissible to the learned Advocate General, there is no substance in it and it must fail on merits. We have carefully read the observations in paragraph 19 of the judgment of the Supreme Court in State of Madhya Pradesh and Others Vs. Vishnu Prasad Sharma and Others, but we do

not think these observations lay down the proposition contended for on behalf of the respondents. To understand what the observations mean it is necessary to look at the context in which the observations were made. One of the arguments urged on behalf of the State in *State of Madhya Pradesh and Others Vs. Vishnu Prasad Sharma and Others*, was that "the only way in which the notification under S. 4(1) can come to an end is by withdrawal u/s 48(1)" and therefore, so long as the Government has not withdrawn by definite action u/s 48, sub-section (1), the notification u/s 4 sub-section (1) would remain outstanding and it can be availed of for supporting subsequent notifications u/s 6. This argument was repelled by the Supreme Court and while dealing with this argument Wanchoo, J. speaking on behalf of himself and Mudholkar, J. observed in Paragraph 19 of the judgment:

"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 notification under Sections 4 and 6, provided it has not taken possession of the land covered by the notification u/s 6.....section 48(1) thus gives power to Government to withdraw from the acquisition without cancelling the notifications under Sections 4 and 6 after notice u/s 9(1) has been issued and before possession is taken. This power can be exercised even after the Collector has made the award u/s 11 but before he takes possession u/s 15. section 48(2) provides for compensation in such a case. The argument that section 48(1) is the only method in which the Government can withdraw from the acquisition has, therefore, no force because the Government can always cancel the notifications under Ss. 4 and 6 by virtue of its power u/s 21 of the General Clauses Act, and this power can be exercised before the Government directs the Collector to take action u/s 7. section 48(1) is a special provision for those cases where proceedings for acquisition have gone beyond the stage of the issue of notice u/s 9(1) and it provides for payment of compensation u/s 48(2) read with S. 48(3). We cannot, therefore, accept the argument that without an order u/s 48(1) the notification under S. 4 must remain outstanding. It can be cancelled at any time by Government u/s 21 of the General Clauses Act and what section 48(1) shows is that once Government has taken possession it cannot withdraw from the acquisition. Before that it may cancel the notification under Sections 4 and 6 or it may withdraw from the acquisition u/s 48(1). If no notice has been issued u/s 9(1) all that the Government has to do is to pay for the damage caused as provided in Section 5; if on the other hand a notice has been issued u/s 9(1), damage has also to be paid in accordance with the provisions of section 48 (2) and (3)". Now in the first place, it must be remembered that the Supreme Court was not directly concerned with the question as to whether Section 6 notification could be validly cancelled after issue of notice u/s 9(1) and what would be the effect of such cancellation. The only limited question before the Supreme Court was whether action u/s 48 sub-section (1) is the only way in which the notification u/s 4 (1)

can be put an end to and in the absence of such action the notification u/s 4 (1) would remain outstanding for ever and it was in the context of this question that the Supreme Court made the above observations. The Supreme Court pointed out that section 48, sub-section (1) is not the only method in which the Government can withdraw from the acquisition because the Government can always cancel the notifications under Ss. 4 and 6 in exercise of its power under Sec.21 of the General Clauses Act, 1897. There are two distinct sources of power, said the Supreme Court, under which the Government can withdraw from the acquisition; one is u/s 21 of the General Clauses Act, 1897 and the other is u/s 48, sub-section (1) and it would not therefore be correct to say that the notifications under Sections 4 and 6 can be put an end to only by action u/s 48 sub-section (1). This was the only point which called for decision in that case and which was actually decided by the Supreme Court. The Supreme Court no doubt incidentally made certain observations which seem to bear on the relative scope and ambit of the two powers but that was not the question before the Supreme Court and we do not think the Supreme Court intended to lay down the law on that point. Moreover the observations if properly read do not suggest that the power of cancellation u/s 21 of the General Clauses Act, 1897 cannot be exercised after issue of notices u/s 9 sub-section (1) and such cancellation would be invalid and ineffective. As a matter of fact, the observations which have been underlined by us clearly indicate that according to the Supreme Court, the notification u/s 6 can be cancelled at any time before possession is taken. When the notification u/s 6 is cancelled before issue of notices u/s 9 sub-section (1) there is no question of payment of compensation to the land holder except as provided in Section 5 but when the notification u/s 6 is cancelled after issue of notices u/s 9, sub-section (1), it is really withdrawal from the acquisition u/s 48 sub-section (1) and compensation has to be paid to the land holder in accordance with the provisions of section 48, sub-sections (2) and (3). The conferment of the power to withdraws from the acquisition u/s 48 sub-section (1) does not exclude the exercise of the power of cancellation u/s 21 of the General Clauses Act, 1897; in fact the cancellation of the notification u/s 6 u/s 21 of the General Clauses Act, 1897 would be one of the modes in which the Government may withdraw from the acquisition u/s 48 sub-section (1). There is no rigid dichotomy between the exercise of the two powers; one in certain circumstances, may coincide with the other. The observations of the Supreme Court in *State of Madhya Pradesh and Others Vs. Vishnu Prasad Sharma and Others*, do not therefore in our view lay down the proposition that the notification u/s 6 cannot be cancelled after issue of notices u/s 9 sub-section (1) and that the only mode in which the Government can then withdraw from the acquisition is by resorting to section 48 sub-section (1).

8. But even if our reading of the observations of the Supreme Court is not correct and they are construed as laying down the proposition that there can be no valid and effective cancellation of the notification u/s 6 after the acquisition proceeding has gone beyond the stage of notices u/s 9 sub-section (1), we do not think the

notification dated 28th April, 1966 is ineffectual or futile. There are two salient features of the notification dated 28th April 1966 which may be noticed. One is that the notification dated 28th April 1966 does not disclose the source of the power under which it is made and the other is that it does not use the word "rescind" which is to be found in Section 21 of the General Clauses Act, 1897 but uses the word "cancel". It therefore becomes a question of construction as to whether the notification dated 28th April 1966 is issued u/s 21 of the General Clauses Act, 1897 or u/s 48 sub-sec (1). Now it is a well settled rule of interpretation to which we have made reference in our judgment in Special Civil Applications Nos. 316, 325 and 811 of 1965 (Guj) 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. If the notification dated 28th April, 1966 were construed as having been made u/s 21 of the General Clauses Act 1897 it would, on the above interpretation of the observations of the Supreme Court, be invalid whereas it would be valid if construed as having been made u/s 48 sub-section (1). We must therefore incline to the view the notification dated 28th April, 1966 was made in exercise of the power u/s 48 sub-section (1) and not in exercise of the power u/s 21 of the General Clauses Act, 1897. Moreover, if we look at section 48, sub-section (1), that section does not require that any particular formula should be adopted for the purpose of withdrawing from the acquisition under that section. No specific words are required to be used in order to effectively exercise the power of withdrawal u/s 48 sub-section (1). All that S. 48(1) requires is that the Government should manifest its will to withdraw from the acquisition. This will may be expressed by any appropriate or suitable language. The Government may say: "We withdraw from the acquisition" or "we do not wish to pursue the acquisition" or "we abandon the acquisition" or any other words sufficient to express the will of the Government not to proceed with the acquisition. One of the modes in which the Government may express its will to withdraw from the acquisition is by issuing a notification cancelling the notification u/s 6. When the Government cancels the notification u/s 6 cancellation being admittedly prospective in operation, what has gone before is not obliterated but only the future course of the acquisition proceedings is arrested - its future existence is annihilated. The particular acquisition which started on issue of the notification u/s 6 - in which Section 4 notification has culminated - is put an end to: it is abandoned and given up. The Government in effect and substance says: "We do not wish to pursue the acquisition further" and that is nothing else than withdrawal from the acquisition within the meaning of section 48 sub-section (1). The notification dated 28th April, 1966 was therefore clearly a notification withdrawing from the acquisition u/s 48, sub-section (1). The learned Advocate General sought to resist this conclusion by pointing out that subsequent conduct of the Government showed that it had no intention of withdrawing from the acquisition when it issued the notification dated 28th April, 1966, for within less than three months from that date it issued the second Section 6 notification. This

argument, plausible though it may seem, is not well-founded: it seeks to apply a wrong test for the purpose of determining the source of the power under which the notification dated 28th April, 1966, was made. The question is not what was the intention of the Government in issuing the notification dated 28th April 1966 - whether it wanted to withdraw from the acquisition or not - but what was the effect of the cancellation which was made by the notification dated 28th April 1966 - whether it wanted to withdraw from the acquisition or not - but what was the effect of the cancellation which was made by the notification dated 28th April, 1966. What is relevant to consider is the legal effect of the notification dated 28th April, 1966 and the intention of the Government in making it. It is immaterial what legal effect the Government intended to produce: the Government might have mistakenly thought that it was bringing about a particular legal effect when it issued the notification dated 28th April, 1966. We have to construe the notification dated 28th April, 1966 as it stands and determine what is the legal effect of that notification and so far as this question is concerned, we have no doubt, for reasons which we have already discussed above, that the legal effect of the notification dated 28th April, 1966 was that the Government withdrew from the acquisition u/s 48 sub-section (1). If that be so, it is clear that our decision in Special Civil Applns. Nos. 316, 325 and 811 of 1965 (Guj) must govern the present case and the second Section 6 notification cannot be sustained on the basis of the existing Section 4 notification and it must be held to be void on the ground that it is not supported by any notification under State. 4.

9. Re. Ground (B): The question whether the Government is bound to make a declaration u/s 6 without unreasonable delay after the issue of Section 4 notification rests on a proper interpretation 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 our judgment delivered on 18th March, 1969 in Special Civil Appln. No. 729 of 1968 (Guj) that the declaration u/s 6 in order to be valid must follow within a reasonable time after the issue of Section 4 notification. It therefore remains to consider whether the time that elapsed between Section 4 notification and the second Section 6 notification could be regarded as reasonable on the facts and circumstances of the present case. The notification u/s 4 was issued on 20th May, 1961 and the second Section 6 notification on 6th June, 1966 and there was thus an interval of about five years 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 29th April, 1963 after holding the requisite inquiry and considering the report of the Collector u/s 5A, sub-section (2). This notification was clearly valid - and indeed as pointed out above, this position was not disputed by the learned Advocate General on behalf of the State - and the Special Land Acquisition Officer actually proceeded to make an award dated 21st December, 1963 determining the amount of compensation payable to the petitioners in respect of the acquisition of their lands under this notification but before the acquisition

could be completed the Government, for some reason which it is difficult to divine, cancelled this notification on 28th April, 1966. There was obviously no justification for cancelling the first Section 6 notification and even if the Government wanted to cancel the first Section 6 notification and substitute it by the second Section 6 notification, there was no reason why the Government should have waited from 29th April, 1963 upto 6th June, 1966. The delay from the date of the award, namely, 21st December, 1963, upto the date of cancellation, namely, 28th April, 1966, was in any event totally inexplicable. The total period which elapsed between Section 4 notification and the second Section 6 notification was about five years and this can in no view of the matter be regarded as reasonable. Even tested by the yard-stick of reasonable time provided by the Legislature in the second proviso introduced in Section 6 by the Land Acquisition (Amendment and Validation) Act, 1967, namely, three years, the period of about five years would be clearly unreasonable. The Government cannot be permitted to trifle with the property rights of the citizen. The second Section 6 notification must therefore be held to be invalid on this ground also.

10. Re. Ground (C): This ground is wholly without substance: it stands concluded adversely to the petitioners by a decision of a Division Bench of this Court in *Girdharlal v. State of Gujarat*. (1965) 6 Guj LR 569. Vide the observations of Shelat, C.J. in paragraph 9 at page 581 of the report.

11. Re. Ground (D): This ground is also without force for it is based on an allegation of fact which is disputed on behalf of the respondents. Shri Mohanlal Vyas who was at the relevant time a Minister in the Government of Gujarat has filed an affidavit denying that he had anything to do with the issue of the second Section 6 notification. He has stated that he was merely a member of the third respondent society like any other citizen and he did not exercise any influence for the purpose of getting the second Section 6 notification issued by the Government and the second Section 6 notification was not issued by the Government at his instance or with a view to obliging him. This raises a disputed question of fact which we do not ordinarily decide in the exercise of our extraordinary jurisdiction under Article 226 and the plea of mala fide based upon it must therefore fail.

12. Re. Ground (E): This ground raises a highly debatable question but in the view taken by us as regards grounds (A) and (B), it is not necessary to examine the validity of this ground and we do not therefore propose to say anything about it in these petitions.

13. 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 6th June, 1966 issued by the Government u/s 6 of the Land Acquisition Act, 1894 in so far as it affects the petitioner's lands. The respondents will pay to the petitioners in each petition the cost of the petition.

14. Petitions allowed.