

(1964) 08 PAT CK 0004
In the Patna High Court
Case No : A.F.A.D. No's. 973 to 984 of 1959

State of Bihar and Another	Vs	APPELLANT
Tulsi Ram Tibriwala and Others		RESPONDENT

Date of Decision : 20-08-1964

Acts Referred:

Land Acquisition Act, 1894 — Section 3, 3(1), 4, 4(1), 5A

Citation : AIR 1964 Patna 568

Hon'ble Judges : R.K. Choudhary, J;A.B.N. Sinha, J

Bench : Division Bench

Advocate : Government Pleader, for the Appellant; S.C. Banerjee and Sushil Kumar Mazumdar, for the Respondent

Final Decision : Dismissed

Judgement

A.B.N. Sinha, J.—These twelve appeals by the defendants which have been made analogous and have been heard together arise out of twelve suits instituted by twelve sets of plaintiffs. The reliefs claimed in all the suits were more or less identical. The plain tiff-respondents are interested in different pieces and parcels of land with or without construction thereon situate in village Rohraband Pergana Jharia, district Dhanbad. They prayed for a declaration that the land acquisition proceedings and the awards made therein arising out of a declaration dated the 5th January, 1951 and published in the Bihar Gazette of the 17th January, 1951 and purporting to have been issued u/s 6 of the Land Acquisition Act, 1894 and the acquisition made of the different pieces and parcels of land in which they were respectively interested were wholly void, illegal and without jurisdiction. There was also a prayer for a permanent injunction restraining the defendant-appellants, their agents and servants from taking possession of the suit properties.

2. Both the defendants, namely, the State of Bihar, and the Special Land Acquisition Officer, Ranchi, filed a joint written statement, and the challenge to the land acquisition proceedings was sought to be refuted on various grounds. It

was asserted that the declaration u/s 6 made in the year 1953 was valid, and that the suit lands had been properly acquired.

3. As common questions of law and fact arose for determination in all the twelve suits and in the corresponding appeals arising therefrom before the lower appellate court; the suits as well as the appeals with the consent of the parties were heard together and were disposed of by one judgment In this Court as well, all these twelve appeals have been heard together and this judgment will govern all of them. The trial court having decreed all the twelve suits and the appeals by the defendants before the lower appellate court having failed, the defendants have preferred all these second appeals, which have been referred to Division Bench by the learned Single Judge before whom they first came for hearing.

4. The facts leading to the institution of the suits and relevant for the purpose of these appeals are as follows: A notification (Ext L/2) dated the 5th January, 1945 u/s 4 of the Land Acquisition Act, 1894 (Act 1 of 1894), hereinafter referred to as "the Act", was published in the Bihar Gazette of the 10th January, 1945. The said notification so far as it is relevant was in the following terms:

"No. 54-IL-169/44-R. -- Whereas it appears to the Government of Bihar that land is required to be taken by Government at the public expense for a public purpose, viz., for the location of a factory for the manufacture of Ammonium Sulphate and allied industries, establishment of the Bihar Grid Power Station, and incidental purposes, such as quarters for officers and subordinate employees, construction and improvement of roads, etc. in Jharia in the district of Manbhum, it is hereby notified that for the above purpose, the land in the villages specified in the Schedule be-low is likely to be needed.

xx xx xx xx Objections to the acquisition, it any, filed u/s 5-A by any person interested within the meaning of that section on or before the 9th February, 1945, before the Deputy Commissioner, Manbhum, will be considered."

The schedule to this notification mentioned as many as thirty-three villages including village Rohraband Thereafter, the State of Bihar, in due course being satisfied that a particular area of land measuring 1708.25 acres in village Rohraband was needed for the purpose as specified in the notification u/s 4 as aforesaid, issued on the 16th May, 1946, a declaration to that effect u/s 6 of the Act read with Section 3(1) of Act XVIII of 1885, and in pursuance thereof the particular area of land -- so declared was acquired and factories etc. as intended were constructed thereon. The several pieces and parcels of lands in village Rohraband including the suit lands which had not been specified as needed for acquisition under the declaration u/s 6 of the Act and had thus been left out of acquisition proceedings continued to be in the possession and enjoyment of their respective owners, and, according to the case of the plaintiffs, so far as the suit lands are concerned, costly pucca buildings came to be erected thereon. Defendant No. 1, the State of Bihar, however, without issuing any fresh notification u/s 4(1) and without complying with the provisions of Section 5A,

came up with another declaration dated the 5th January, 1951 u/s 8 of the Act read with Section 3, Clause (1) of Act XVIII of 1885 and published the same in Bihar Gazette on 17th January, 1951. The relevant portion of this declaration which was in respect of 64.77 acres of lands in village Rohraband was in the following terms:

"Whereas it appears to the Government of Bihar that land is required to be taken by Government at the public expense for a public purpose, viz., for construction of Mechanical and Electrical College at Sindri, in the village of Rohraband, thana No. 189 pargana Jharia, thana Jharia, zila Manbhum. It is hereby declared that for the above purpose a piece of land measuring more or less 195 bighas 18 kathas 8 chitaks of standard measurement, equivalent to 64,77 acres,

xx xx xx xx is required within the aforesaid village of Rohraband, thana No. 169.

xx xx xx xx This declaration is made under the provisions of Section 8 of Act I of 1894, and Section 3, Clause (1) of Act XVIII of 1885, to all whom it may concern.

xx xx xx xx Thereafter, in Land Acquisition Cases Nos. 12 of 1951 and 3 of 1953, covering the entire suit lands, commenced in pursuance of this second declaration u/s 6 of the Act as aforesaid, awards were made in due course, and the plaintiffs of the suits except those of T.S. Nos. 168 of 1954 and 113 of 1956, being aggrieved mainly with the quantum of the compensation awarded; the buildings not having been valued at all, got references made u/s 18 of the Act, but subsequently all the references were withdrawn and the twelve suits out of which these appeals, arise were instituted for the reliefs mentioned above.

5. The trial court held on all the points in favour of the plaintiffs. It found that the suits were not barred by estoppel etc., that the impugned declaration of the year 1951 issued u/s 6 of the Act was invalid, as it had been issued neither in conformity with the language of Section 5 as it stands after its amendment in 1923 nor had the Government before issuing the same complied with the mandatory provisions of Section 5A of the Act, that the public purpose mentioned in the notification u/s 4(1) of the year 1945 being different from the purpose mentioned in the impugned declaration it could not be said that there was any occasion for the Government to be satisfied that the land was needed for the purpose for which the notification u/s 4(1) was made, that upon the scheme of the Act and taking into consideration the true intendment of the legislature, the force of a notification u/s 4(1) of the year 1945 was exhausted after the declaration of 1946 was made and unless a fresh notification u/s 4(1) of the Act was issued, the impugned declaration of 1951 was wholly without jurisdiction. The trial court did not think it necessary to give any finding on the question whether the constructions on the land in suit had been made before or after 1945. On appeal by the defendants to the lower appellate court it appears that the challenge to the declaration of 1951 was confined only to two grounds, namely (1) that it was bad, because it had been issued without complying with the mandatory provision of Section 5-A and (2) that the notification u/s 4(1) of

the Act issued in the year 1945 having exhausted itself after the declaration u/s 6 in the year 1946 was issued, no fresh declaration u/s 6 could be validly issued without issuing another notification u/s 4(1) of the Act. The defendant-appellants sought to counter the first challenge on the ground that it was not open to the plaintiffs-respondents to take the plea of invalidity of the declaration u/s 6 of the year 1851 on account of non-compliance with the provisions of Section 5A of the Act as no such plea had specifically been taken in the plaints.

In regard to the second challenge, they con-tended that it was wholly untenable and that upon the scheme of the Act it should have been held by the trial court that the notification u/s 4(1) which was issued in the year 1945 did not exhaust itself after the first declaration u/s 6 had been issued in the year 1946; and, accordingly the second declaration issued u/s 6 of the Act in the year 1951 was valid and it did not require a fresh notification u/s 4(3) of the Act to validate the same. It was further urged on behalf of the defendant-appellants that the plaintiffs having preferred claims and having got references made to the District fudge u/s 18 of the Act were estopped from challenging the validity of the acquisition proceedings. The lower appellate court repelled all the aforesaid contentions. It held that it was open to the plaintiffs to show from the documents filed by the defendants that the acquisition proceedings and the resulting awards were wholly invalid for non-compliance with the provisions of law even though they had not put forward the plea specifically in the plaint. It further held that on account of non-compliance with the provisions of Section 5-A of the Act the acquisition was invalid and illegal. It also agreed with the trial court in holding that the force of the notification u/s 4(1) was wholly exhaust-ed after the first declaration was made in May, 1946; and accordingly the second declaration made in 1951 was without jurisdiction and the proceedings and the awards in all the cases were illegal. It further agreed with the trial court in holding that there was no substance in the defendant's contention that the plaintiffs were estopped from challenging the invalidity of the acquisition proceedings. On these findings the decision of the trial court was affirmed and the appeals were dismissed Hence, these second appeals to this Court.

6. The only point which has been canvassed on behalf of the appellants is whether the courts below were right in law in holding that the notification issued u/s 4(1) of the Act in the year 1945 exhausted itself upon the making of the first declaration u/s 6 in the year 1946 so as to require the issuing of a similar notification afresh before the Government could validly make the second declaration u/s 6 in the year 1951. The learned Government Pleader, appearing for the appellants, has contended that once the Government had issued a notification u/s 4(1) notifying the locality in which land was said to be needed or was likely to be needed for some public purpose and the Collector and the Government had duly complied with the provisions of Section 5A, it was permissible, under the Act, to the Government to proceed to make one or more than one and successive declarations u/s 6 in respect of the lands or of different portions thereof already notified u/s 4(1); the Government alone being the sole

judge of the space and the extent of the acquisition to be made. According to his submissions there was nothing in the Act to restrict the force of the notification issued u/s 4(1) to the making of only one declaration u/s 6 or to prohibit the Government from launching, if they so liked, upon a scheme of piecemeal acquisition of the lands notified u/s 4(1), and consequently from making as many declarations u/s 6 and at such interval of time, as might be thought feasible. The view on this point which had found favour with the courts below was characterised as erroneous in law, and, accordingly, it was contended that the judgment and decree under appeal were fit to be set aside and the suits dismissed. It was further submitted that it was only in cases where either the Government had expressly or impliedly withdrawn from the acquisition as provided for u/s 48 of the Act or the notification issued u/s 4(1) had itself been cancelled or superseded that further proposals for acquisition of the lands comprised in the locality notified u/s 4(1) had to be followed up by a fresh notification under that section, other wise so long as no such steps had been taken the notification issued u/s 4(1) remained alive until all the lands notified thereunder had been acquired.

7. Shri S.C. Banerjee, the learned counsel, appearing for the plaintiff-respondents challenged the correctness of the contentions raised on behalf of the appellants and, submitted that the view taken by the courts below on the particular issue in controversy was warranted in law, and, indeed was the only possible view which could be taken upon a fair and proper construction of the relevant provisions of the Act. According to his submissions, the Act did not countenance the making of more than one declaration u/s 6 in pursuance of a particular notification issued u/s 4(1), and as such, the second declaration u/s 6 made in the present case in the year 1951, the acquisition proceedings in respect of the suit lands commenced in pursuance of that declaration and the awards made therein were wholly void and without jurisdiction and the courts below have rightly quashed them and decreed the suits.

8. Except the solitary decision of the Madhya Pradesh High Court in the case of Vishnu Prasad Sharma and Others Vs. State of Madhya Pradesh and Others, referred to on behalf of the respondents, the correctness whereof has been strenuously challenged on behalf of the appellants, no other decision has been brought to our notice which deals with the precise question in controversy in the present case.

The case reported in Parshottam Jethalal Soni Vs. The Secretary of State for India, on which reliance was placed on behalf of the appellants is not a case in point. In that case the very first declaration made u/s 6 in pursuance of a notification issued u/s 4(1) was challenged as invalid on the ground that it had been made after a lapse of more than five years; the latter having been issued in August 1928 and the former in May 1934. This challenge appears to have been repelled on the ground that it was not open to the courts to treat a notification u/s 4(1) as invalid or having become invalid if it had not been followed, within a

reasonable time by a declaration u/s 6. It is clear, therefore, that this decision has no relevance to the question, arising in the present case.

Nor is the case of Radhashyam Vs. Katyani Dasi and Others, very much in point. The ratio of that decision may, however, afford some assistance. In that case, the declaration u/s 6 made on the 4th August, 1927 was in respect of an area measuring 11 kathas having a two-storied building and other structures thereon. The Government had not proceeded with the acquisition of the whole of 11 kathas and had acquired only an area of 4 kathas and odd and an award had been made on the 7th March, 1932 in respect thereof. In 1951, the unacquired portion of the land was sought to be acquired on the basis of the declaration already issued in 1927 u/s 6, and notices under Sections 9 and 10 of the Act were served on the heirs of the owner. The revival in 1951 of a land acquisition proceeding started in 1927 was challenged as illegal and invalid and the land acquisition Collector had given effect to the challenge and had dropped the proceedings, but on Government's direction the proceedings were re-started and were being proceeded with. On these facts, while on one hand, it was argued that once the declaration was made u/s 6 the Government was vested with the right without any limitation of time and notwithstanding any hardship involved to acquire the whole or any portion of the land in respect of which the declaration had been made in course of one or more than one proceeding, unless the Government had withdrawn from the acquisition u/s 48 of the Act, on the other, it was contended that Sections 6 to 9 did not authorise the Government to acquire anything less than "the land" in respect of which the declaration had been made u/s 6. Rejecting both of these contentions as representing the extreme view respectively, and, therefore, unsound, their Lordships came to the conclusion that except in two specified cases, viz., (1) where the land in respect of which the declaration u/s 6 had been made was under the ownership of different individuals, and, (2) where the acquisition proceedings in respect of the declared land had been held up by circumstances over which the acquiring authority had no control- the ordinary rule was that there could be no piecemeal acquisition in respect of land for which a declaration had been made u/s 6, and, one of the reasons for this conclusion was that "to hold that piecemeal acquisition is permissible under all circumstances will mean this that the Government may make a declaration u/s 6 today and then proceed to acquire the land in parcels at the intervals of fifty hundred and two hundred years" and thus deprive the owners of the benefit of any increase in the value of the land -- a consequence which could not be said to have been Intended by the Act. It will be seen how this reasoning applies with greater force and justification in resolving the controversy in the present case than in the Calcutta decision referred to above, for since after the amendment effected in Section 23 of the Act by the Amending Act 38 of 1923, while determining the amount of compensation to be awarded for land acquired under the Act, the market value of the land as at the date of the notification u/s 4(1) and not as at the date of the making of the declaration u/s 6 has to be taken into consideration. The Madhya

Pradesh decision, referred to above, however, is a decision very much in point. In that case, like in the present one after a notification u/s 4(1) had been issued in 1949 saying that lands in certain village including a village called Chawni were likely to be needed for a public purpose, a declaration u/s 6 in respect of only a portion of the lands in village Chawni had been issued and acquisition had been made of that land in or about the year 1956, when another declaration u/s 6 proposing to acquire further land in village Chawni was made in 1960. It was admitted in that case as it is admitted in the present case that the second declaration had not been preceded by any fresh notification u/s 4(1). On those facts, the declaration of the year 1960 was impugned is void as not having been preceded by any fresh notification u/s 4(1), and it was contended that after the making of the first declaration u/s 6 In or about the year 1956, the notification u/s 4(1) issued in 1949 was no longer subsisting and as such was not available for the purpose of further acquisition in the village in question. This contention was accepted as correct and it was held that once a particular area in the locality notified u/s 4(1) was fixed and a declaration to that effect had been made, all the efficacy of the notification u/s 4(1) in pursuance of which the area had been so fixed came to an end and unless a fresh notification u/s 4(1) was issued, no further declaration u/s 6 could validly be made with a view to acquire further land in the locality already notified u/s 4(1), and, accordingly, the second declaration made in 1960 in that case was struck down as one without jurisdiction. This case is quite clearly on all fours with the present case, and, I perceive no reason why the present case should be differently decided. The learned counsel appearing for the appellants has, however, challenged the correctness of this decision and has urged for the acceptance of his contentions as mentioned above. In the circumstances and also in view of the importance of the question involved I may indicate my reasons for taking the same view of the matter in controversy as has been taken in the decision of the Madhya Pradesh High Court referred to above, but before I do so, a brief reference to the relevant provisions of the Act will be useful.

9. The Act, as its Preamble shows, deals with "the law for the acquisition of land needed for public purpose and for companies and for determining the amount of compensation to be made on account of such acquisition" The power of the State to take private property for public purpose or for Companies and the right of the owner of the property so taken to receive compensation form the basis of the Act. So that this power in the State to take private property be not abused and may not become a menace to the owners of private property, the Act lays down certain procedural safeguards. Now, quite naturally the proposal to take or to acquire private property for public use has to be initiated by the State -- the repository of the power, and, this is done by adopting the procedure of issuing a notification under Sub-section (1) of Section 4 of the Act. It provides that.

" "whenever it appears to the appropriate Government that land in any locality is needed or is likely to be needed for any public purpose, a notification to that effect shall be published in the official Gazette", and with a view to ensure

information to all the persons likely to be affected by the proposal it further provides that the Collector shall cause public notice of the substance of such notification to be given at convenient places In the said locality

Upon the issue of such a notification, it becomes lawful, as sanctioned by Sub-section (2) of Section 4, for any officer of the Government, its servants or workers to embark upon a preliminary investigation with a view to finding out after necessary survey etc, whether the land notified or any portion thereof was adopted for the purpose for which it was sought to be acquired. It will be pertinent to notice that since after the insertion of the words "is needed or" by the Amending Act 38 of 1923, it is obligatory to issue notification u/s 4(1) in all cases of acquisition, viz., in cases where land was needed as well as in cases where land was only likely to be needed Accordingly in all conceivable cases of acquisition, a preliminary investigation with a view to inform the mind of the Government on the question of the adaptability or otherwise of the land notified Is now essential After reconnaissance as contemplated by Section 4(2), the Government may and, frequently does come to the conclusion that only a portion of the lands notified u/s 4(1) was really suitable for the purpose for which acquisition was sought to be made. Another consideration which in justice and fairness should weigh with the acquiring authority before it finally decides to acquire is the viewpoint of the persons interested in the land sought to be acquired. This is the object sought to be achieved by Section 5-A, a section which was added to the Act for the first time in 1923 by the same Amending Act which inserted the change in Section 4(1) as noted above. In view of the object and purpose of Section 5-A. It is permissible to presume that the change in the language of Section 4(1) was really consequential on the addition of this new Section 5-A, which provides that within thirty days of the issue of the notification u/s 4(1) any person interested in any land notified thereunder may object in writing to the acquisition and thereupon the Collector has to give to the objector an opportunity of being heard in person or by pleader and after hearing such objections and after making such further enquiry if any as he thinks necessary to submit the case for the decision of the Government with the record of the proceedings held by him together with a report containing his recommendations on the objections, and the section further provides that the decision of the Government on the objections shall be final. It is pertinent to remember that before the addition of Section 5A to the Act, persons interested in the land proposed to be acquired and who would naturally be prejudicially affected in the sense that they would be deprived of their lands, though not without compensation, had no right to object to the acquisition, nor was the Government obliged to enquire into and consider any objection that might reach them and upon the Act as it was before 1928, the case of *Ezra v. Secretary of State* ILR 30 Cal 36 had held that in the matter of acquisition of land the wishes of the owners of the land were wholly irrelevant. By virtue of Section 5A the position now is altered; the person interested has to be afforded an opportunity to object to the acquisition proposed, the objections, have to be inquired into and the

Government has to come to a decision thereon. After such a decision has been taken, Section 6 provides the method for giving expression to that decision. This section provides inter alia, that "when the appropriate Government was satisfied, after considering the report, it any, made u/s 5-A, Sub-section (2), that any particular land was needed for a public purpose of for a company, a declaration shall be made to that effect under the signature of a Secretary to such Government or of some officer duly authorised to certify its orders" and, it further requires that the declaration shall be published in the official Gazette and shall state the proper description area and other particulars of the land so declared, and it is only when a firm declaration u/s 6 is made that the Government may proceed to acquire the land in the manner laid down in Sections 7 to 17-A. Consequential on the amendment in Section 4 and on the introduction of Section 5-A, the Land Acquisition Amendment Act (Act 38 of 1923) (by Section 4 of the said Act) substituted the words in Section 6(1) "when the Local (changed subsequently to Provincial and finally to appropriate; Government is satisfied after considering the report, it any u/s 5-A, Sub-section (2)" for the words "whenever it appears to the Local Government"

10. From the relevant provisions of the Act, referred to above, it will appear that the notification u/s 4(1) is exploratory, tentative and introductory in character and serves a twofold purpose (1) to enable the Government to find out whether the land sought to be acquired or any portion thereof was adapted for the purpose for which the acquisition was sought to be made and (2) to enable the persons interested to place their own viewpoints in regard to the proposed acquisition by giving public notice to them that their land was needed or was likely to be needed for a particular public purpose. The first purpose is achieved when the Government as a result of preliminary investigation carried on in pursuance of the notification u/s 4(1) comes to a firm conclusion that "any particular land* with definite specifications out of the land in any locality" as notified u/s 4(1) was alone needed for the purpose in question, and makes a declaration u/s 6 to that effect. A comparison of the language of Section 4 and of Section 6 shows how Section 4(1) really fructifies itself in Section 6, for instance, while Section 4 refers to "land in any locality", and to land as "needed or likely to be needed" Section 6 contemplates the "particular land" and speaks of the land "needed" and while u/s 4 it must only appear to the Government that the land was needed for a public purpose, in Section 6 the Government has to be satisfied that it is so needed. In short, by the time that stage is reached when the declaration provided by Section 6 is made the notification u/s 4(1) has fully worked itself out, its avowed purpose has been achieved in so far as in pursuance of it, the particular land needed has been picked and marked out. In this view of the matter it cannot but be said that upon the making of the declaration u/s 3 the notification issued u/s 4(1) has lost all meaning and purpose and has exhausted itself. There is yet another reason for the same conclusion. As has been pointed out above the second purpose of Section 4(1) is to inform the persons interested in the land sought to be acquired about the tact

that "it appears" to the Government that their lands were needed or were likely to be needed for a public purpose and may have to be acquired, and in pursuance of this notice or information, the persons interested are required to exercise their right to object to the proposed acquisition on whatever ground they choose to. Section 5A not only provides a forum for the hearing of those objections but also provides in express terms that the Collector who has made the enquiries has to submit the case for the decision of the appropriate Government", whose decision on the objections shall be final". This second purpose of the notice u/s 4(1) is almost achieved when the Government has arrived at a final decision on the objection, i.e., has come to a conclusion whether the objections were acceptable as a whole and consequently the proposal for acquisition has to be dropped or were acceptable only in part and thus the proposal has to be modified accordingly or were not at all acceptable and therefore the proposal as initiated has to remain intact and be proceeded with, but however final that decision might be, it has yet to be declared and made known and the Government may take their own time in making the declaration, but once the decision whatever that might be is declared, and this can be done u/s 6 which contemplates the making of "a declaration to that effect" at the stage "when the appropriate Government is satisfied after considering the report u/s 5A, Sub-section (2)" the notice u/s 4(1) which had served to initiate the proposal for acquisition comes to an end because in regard to the proposal initiated a final decision has been reached and the meaning and purpose of the introductory measure is thus exhausted. The use of the words "a declaration shall be made to that effect under the signature of a Secretary to such Government or of some officer duly authorised to certify its orders" in Section 6(1) not only ensures the authenticity of the declaration, it also gives the declaration more or less the colour of a formal order of a court. It is not relevant for the present case to determine whether the enquiry u/s 5A or the decision taken thereon by the Government under that section is quasi-judicial or merely administrative in nature; it is enough to point out that a decision is arrived at on the objections after an enquiry at which the objectors have been given a hearing. The materials before the Government may not be confined to record of the proceedings of enquiry, it may include the results of other inquiries which the Collector might have made, but the fact remains that the decision on the objections, may be in the light of all the materials available. The decision so made and declared u/s 6 is final on the express terms of Sub-section (2) of Section 5A, which in my opinion means and implies that it is as much binding on the objectors whose objections have been subjected to a consideration and decision as on the Government, and, it will not be open to the latter to revive the decision once made unless they choose to revive the proposal for acquisition by an issue of a fresh notification u/s 4(1). It is quite clear to me that the decision once taken u/s 5A could hardly be cancelled or altered, and, once a decision has been taken in favour of the objector, it was no longer possible to make another declaration in respect of further lands because quite obviously that would amount to setting aside the decision u/s 5A which the Act says shall be final. It will follow

that if only a portion of the area notified u/s 4(1) was sought to be acquired, as was done in the instant case by the declaration of the year 1946, it must be construed that objections to the rest of the area notified were accepted, otherwise the declaration made in 1946 would have included larger area than it did, in other words it must be construed that the Government's decision on the objections was that except the lands specified in the declaration of 1946 the rest of the lands included in the locality notified u/s 4(1) were not needed for acquisition, and, that decision being final, could not be altered or revised. It comes to this that unless the original proposal was renewed by giving a fresh notice u/s 4(1), and, another opportunity was given to the persons interested to object to any further acquisition from the same locality, the decision reached as above could not be revised by the Government by merely issuing another declaration u/s 6.

11. Besides the aforesaid considerations arising upon a construction of the relevant provisions of the Act, mention may be made of one more factor which is also more or less connected with the construction of those provisions. Now upon Section 6 and upon the scheme of the Act as appearing from its preceding sections it appears to me to be clear that in arriving at the satisfaction that private property must be compulsorily acquired for a public purpose, there must be a fixity of purpose in the mind of the Government, because it is obvious that it is in relation to that purpose that the Government explores and arrives at its satisfaction. Whether it is necessary to state expressly the public purpose for which acquisition was sought to be made in the notification u/s 4(1) may be required to be answered in a case in which the notification is silent on that point. In the present case the notification u/s 4(1) mentions the public purpose for which the acquisition was proposed to be made in rather great detail, and the trial court has found and nothing was said against that finding either in the lower appellate court or in this court, that the public purpose so mentioned in the notification u/s 4(1) was identical with that mentioned in the first declaration made in the year 1946 but was distinct and different from the one mentioned in the impugned declaration. From this finding two conclusions follow; (i) in so far as the first declaration mentioned the very purpose that was mentioned in the notice u/s 4(1) it must be taken to imply a decision by the Government that for the specific public purpose as mentioned in their proposal for acquisition the specific area declared was all that was required or needed for acquisition and nothing more, and, upon the said declaration being made that purpose stood satisfied and, (ii) in so far as the purpose mentioned in the impugned declaration was different and distinct from the one mentioned in the notice u/s 4(1), it necessarily meant that the Government could not be said to have satisfied themselves in relation to any existing public purpose because the purpose mentioned in the impugned declaration being different from the one alluded to in the notification u/s 4(1) the alleged satisfaction could not be referable to it nor could it be said to be referable to any other public purpose as none else had been notified at all. On the first conclusion it must follow that the purpose for which

the proposal for acquisition was made having stood exhausted and fulfilled to the satisfaction of the Gov-eminent as expressed in their first declaration issued in the year 1946, all justification and meaning behind the issuing of the notice u/s 4(1) disappeared and thus the notice itself got fully exhausted, and on the second it has to be held that as the alleged satisfaction of the Government mentioned in the impugned declaration was not refer-able to any notified public purpose, it could not be said that in making the same there was a proper compliance with the provisions of Section 6 and as such it was liable to be struck down. For all these reasons, I am of the opinion that upon a fair and proper construction of the provisions of Sections 4, 5A and 6 and upon a proper appreciation of the scheme as to acquisition as appearing from those sections, it follows that the notification issued u/s 4(1) in 1945 exhausted itself upon the making of the declaration u/s 6 in 1940 to the effect that only 1706.25 acres of particular lands out of the total area of village Rohrabandh was needed for acquisition, and, accordingly, the subsequent declaration u/s 6 made in 1951 in respect of the suit lands comprised in the area which had been left out in the first declaration from acquisition was void and ineffective as it was not preceded by a fresh notification under 5. 4(1) of the Act so as to initiate a fresh proposal for acquisition of those lands.

12. In view of what has been held above it is hardly necessary to deal with the contention that in absence of any provision in the Act prohibiting piecemeal acquisition it should be accepted as permissible. Similar contention was raised in the case of the Madhya Pradesh High Court to which I have already made a reference Golvalkar J. who delivered the judgment of the Court repelled this contention as wholly unsustainable and I find myself in respectful agreement with the reasons given for doing so. This is another reason why I think it unnecessary to deal with this question at any length. It may suffice to set out what was said in this connection in the aforesaid case. The relevant passage reads as under.

"We do not feel disposed to accept that in the absence of any legal provisions prohibiting piecemeal acquisition it has to be accepted as permissible. Expropriatory law has to be interpreted and implemented very strictly within its own terms and in furtherance of its object. Just visualise the position of the petitioners since the publication of the notification u/s 4(1) in the year 1949. During all these 11 years they had but a qualified ownership or enjoyment of their property. They could not improve the land or build upon it; if they have a house they could not rebuild or repair it, however, urgent the necessity of doing so might have been, without the strong probability of getting no return for the money so laid out if the Government were to have taken it ultimately. This suspense could never be intended by the framers of the law to be held over their heads for an indefinite or for the matter of that for an unreasonable period of time."

Earlier while dealing with the same question it has been said as follows:

"Now after being satisfied as to the desirability and suitability of any particular land for the public purpose, and after having fixed the extent of land, the Government issues orders to proceed with the acquisition of the same, and in accordance with the provisions of the Act the land is acquired and paid for. Here in connection with the determination of the acquisition price, it will be pertinently noted that among other considerations in Section 23 of the Act affecting the price, the market value of the land sought to be acquired will be that which was prevailing at the date of the publication of the notification u/s 4(1) of the Act, and not prevailing at any time subsequent to it. If, therefore, the question as to the value of the land falls for determination, which necessarily arises after notification u/s 6, after a lapse of considerable period, the landowner has to be paid at the rate prevailing on the date of first notification. True, that by making such a provision a fair market value is paid to the land-owner, and he is not to be permitted to make any under profit arising out of any increase in the value as a result of the public purpose itself. Ordinarily there is very little time lag between the first notification u/s 4(1) and the second notification u/s 6 and proceeding in pursuance thereto.

Now the unfairness of this provision and irreparable injury to the land-owner therefrom would be apparent when either there is a considerable lapse of period between the said two stages or as in the instant case when the acquisition is taken in hand piecemeal after an interval of 11 years. The petitioners-land-owners are apparently being offered in 1960 market value of their lands prevailing in the year 1949. In our opinion when a person could not be deprived of his property without being compensated for, it would be simply inconceivable that the Legislature had made no adequate provisions to safeguard that valuable right of the land-owner. If, therefore, the provisions in the matter have to be treated as providing sufficient protection for the same, necessarily the provisions of the Act will have to be so interpreted and given effect to as to further that object rather than to defeat it. We should not be understood to suggest that the provisions in clause firstly of Section 23 of the Act are in any manner unfair or bad in law in its own terms. What we are trying to show is that its tendency to be likely to operate unfairly must have been in the view of the framers of the law, and hence the law has to be interpreted and given effect to in such a manner as to leave no scope or occasion for that provision to operate in any prejudicial manner, neither to the acquirer nor to the land-owner who is being deprived of his property".

The proposition as contended for was tested with reference to what can be described as an extreme case in the following words:

"If the framers of the Act are to be understood to confer powers on the Government to acquire land at any time, the State Government may well issue today a notification u/s 4(1) of the Act, stating therein that land in the whole of the State is needed or is likely to be needed for public purpose and then go on merrily acquiring lands anywhere and to any quantity thereafter till the doom's

day at the price prevailing on the date of notification. We do not think it will be fair and correct to ascribe such an intention to the framers of the law."

For the reasons and considerations set out in the passages quoted above, I am definitely of the opinion that the Act does not at all countenance piecemeal acquisition. To the same effect was the observation made in the case of Corporation of Calcutta Vs. Omeda Khatun Bewa, Though, as has been already pointed out the facts of that case were different from the facts of the present case, yet while repelling a similar contention, Lahiri, J., with whom Chakravartti, C J., agreed in a separate but concurring judgment observed as follows:

"To hold that piecemeal acquisition is permissible under all circumstances will mean this that the Government may make a declaration u/s 6 today and then proceed to acquire the land in parcels at the intervals of fifty hundred and two hundred years.

This is certainly not a consequence intended by the Land Acquisition Act."

13. Lastly, it was contended that Section 4(1) notice remained alive and effective until it was neither expressly cancelled or the Government themselves withdrew from the acquisition as provided for u/s 48 of the Act. To this contention the simple answer is that the notification u/s 4(1). Itself having got exhausted and as such having lost all force and efficacy after the making of the declaration u/s 6, the question of its cancellation could not arise, and, that question of withdrawing from acquisition u/s 48 of the Act can arise only after the declaration u/s 6 has been made and not earlier. It has already been pointed out that before a decision to acquire a particular land is taken and a declaration to that effect has been made u/s 6 there is in existence merely a proposal for requisition which in the very nature of things and in the content of the provisions of Section 5-A is only tentative and may or may not mature into a firm decision to acquire. Sub-section (2) of Section 48 clearly shows that Section 48 postulates the existence of a proceeding to acquisition and, as appears From Section 7 of the Act the order for acquisition itself can be taken only after a declaration u/s 6 has been made, and, indeed Sub-section (3) of Section 6 expressly says that "after making such declaration the appropriate Government may acquire the land manner hereinafter appearing" . It is, however open to the Government to cancel the notification u/s 4(1) resulting in the withdrawal of the proposal for acquisition but that does by no means imply that that is the manner in which the notification can come to an end; it can also as has been found above can to an end by working itself out, by fulfilling avowed purpose or in other words by a firm decision being taken and declared in relation to the proposal as initiated by it. This contention as we therefore, has no merit and it must be rejected

14. It follows from what has been said and discussed above that the Courts below were right in holding that upon the making of the first declaration u/s 6 in the year 1946 fixing definite area in village Robrabandh as needed to acquisition the

notification u/s 4(1) which has been issued in the year 1945 fully exhausted it self and having lost all its force and efficacy can to an end and accordingly the impugned second declaration made in the year 1951 without being preceded by a fresh notification u/s (1) and by fresh inquiries u/s 5-A and the acquisition proceedings in respect of the suit land commenced and taken in pursuance thereof and the several awards made therein were void and with out jurisdiction, and, as such were fit to be quash ad. It must be held, therefore, that the suit out of which the present appeals arise have right been decreed and the appeals being thus without merit must fail and are hereby dismissed. In the circumstances of this case, however, there will be no order for costs of this Court.

Choudhary. J.

15. I agree.