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GIRDHARILAL AMRATLAL SHODAN AND OTHERS

v.

STATE OF GUJARAT AND OTHERS

January 28, 1966

B [A. K. SARKAR, J. R. MUDHOLKAR AND R. S. BACHAWAT, JJ.]

Land Acquisition Act, 1894 (1 *of* 1894)—*Notification under s.* 6 *invalid and ineffective—Power of Government to issue fresh notification.*

Where a notification under s. 6 of the Land Acquisition Act, 1894 is invalid, the Government may treat it as ineffective and issue in its place a fresh notification under s. 6. Nothing in s. 48 of the Act pre-
C cludes the Government from doing so. The cancellation of the earlier notification is only a recognition of the invalidity of that notification. [439 B-C]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1070 of 1965.

Appeal from the judgment and order dated April 2, 1965
D of the Gujarat High Court in Special Civil Application No. 584 of 1961.

Niren De, Additional Solicitor-General and *J. B. Dadachanji* for the appellants.

R. Ganapathy Iyer and *B. R. G. K. Achar*, for respondent
E Nos. 1 and 2.

Arun H. Mehta, M. N. Shroff and *I. N. Shroff*, for respondent No. 3.

The Judgment of the Court was delivered by

F **Bachawat, J.** : On August, 3, 1960, the Government of Gujarat issued a notification under s. 4 of the Land Acquisition Act, 1894 (hereinafter referred to as the Act) stating that the land measuring about 7151 sq. yards in Final Plot No. 460 of the Town Planning Scheme No. III of Elisbridge in Ahmedabad taluka city, village Changispur, was likely to be needed for a public purpose, *viz.*, for construction of houses for Shri Krishnakunj Government
G Servants Co-operative Housing Society, Ltd., Ahmedabad. The land is the subject-matter of a trust of which appellant No. 1 is the trustee and appellants Nos. 2 to 6 are the beneficiaries. An enquiry under s. 5-A of the Act was duly held, and a report under s. 5A(2) was made to the Government. On July 18, 1961, the State Government issued a notification under s. 6 of the Act stating
H that the land was needed to be acquired for the aforesaid public purpose at the expense of Shri Krishnakunj Government Servants Co-operative Housing Society Ltd. On September 22, 1961, the appellants filed a writ application in the High Court of Gujarat

praying for an order quashing the notification under s. 6 dated July 18, 1961. During the pendency of this application, the Government issued a notification dated April 28, 1964 cancelling the aforesaid notification dated July 18, 1961. On August 14, 1964, the Government issued a fresh notification under s. 6 stating that the land was needed to be acquired at the public expense for a public purpose, *viz.*, for the housing scheme undertaken by Shri Krishnakunj Government Servants Co-operative Housing Society, Ltd., Ahmedabad with the sanction of the Government. The appellants were thereupon allowed to amend the writ petition, and by the amended writ petition, they prayed for an order quashing the notification under s. 6 dated August 14, 1964 as also the notification under s. 4 dated August 3, 1960. On April 2, 1965, the High Court dismissed the application. The appellants now appeal to this Court on a certificate granted by the High Court.

Counsel for the appellants submitted that the power of the State Government to cancel a notification under s. 6 of the Act implied by s. 21 of the General Clauses Act, 1897 is subject to the condition that the Government should withdraw from the acquisition as provided for in s. 48 of the Act, by cancelling the notification under s. 6 dated July 18, 1961, the Government must be taken to have withdrawn from the acquisition and cancelled the notification under s. 4 dated August 3, 1960 also and consequently the Government could not issue the notification under s. 6 dated August 14, 1964 without issuing a fresh notification under s. 4 and making a fresh enquiry under s. 5A. Counsel for the respondents disputed the correctness of this submission.

It is to be noticed that the notification under s. 6 dated July 18, 1961 stated that the land was required for a public purpose at the expense of Shri Krishnakunj Government Servants Co-operative Housing Society Ltd. The Government had no power to issue this notification. Having regard to the proviso to s. 6 of the Act, a declaration for acquisition of the land for a public purpose could only be made if the compensation to be awarded for it was to be paid wholly or partly out of public revenues or some fund controlled or managed by a local authority. The Government had no power to issue a notification for acquisition for a public purpose where the compensation was to be paid entirely by a company. The notification dated July 18, 1961 was, therefore, invalid and of no effect, see *Shyam Behari* v. *State of Madhya Pradesh*( ). The appellants filed the writ petition challenging the aforesaid notification on this ground. The challenge was justified and the notification was liable to be quashed by the Court. The State Government realised that the notification was invalid, and without waiting for an order of Court, cancelled the notification on April

(1) [1964] 6 S.C.R. 636; A.I.R. 1965 S.C. 427.

28, 1964. The cancellation was in recognition of the invalidity of the notification. The Government had no intention of withdrawing from the acquisition. Soon after the cancellation, the Government issued a fresh notification under s. 6 where, as in this case, the notification under s. 6 is incompetent and invalid, the Government may treat it as ineffective and issue a fresh notification under s. 6. This is what, in substance, the Government did in this case. The cancellation on April 28, 1964 was no more than a recognition of the invalidity of the earlier notification. There is nothing in s. 48, which precluded the Government from treating the earlier invalid notification as ineffective and issuing in its place an effective notification under s. 6. Where the notification under s. 6 is lawful and valid, a question may well arise whether the Government can cancel it without withdrawing from the acquisition, as provided for under s. 48. But no such question arises in this case and we express no opinion on it.

Counsel for the appellants next submitted that on issuing the notification dated July 18, 1961 the power of the State Government to issue a notification under s. 6 was exhausted and the Government could not issue a fresh notification under s. 6. There is no substance in this contention. The notification dated July 18, 1961 was invalid. By the issue of this notification, the Government had not effectively exercised its power under s. 6. In the circumstances, the Government could well issue the fresh notification under s. 6 dated August 14, 1964.

Counsel for the appellants next submitted that the notification under s. 6 must be issued without unreasonable delay after the issue of the notification under s. 4 and consequently, the notification dated August 14, 1964 is invalid, as it was issued after unreasonable delay. This contention was not raised in the High Court. On September 25, 1961, soon after the filing of the writ petition, the appellants obtained an injunction restraining the Government from proceeding with the acquisition. We are informed that this injunction continued for some time and was modified at a later date. Until the modification of the injunction, the Government could not take further steps in the acquisition. The question whether there was unreasonable delay in the issuing of the notification dated August 14, 1964 was not put in issue and was not investigated in the Court below. We, therefore, indicated in the course of the argument that the appellants cannot be allowed to urge this point for the first time in this Court. We express no opinion one way or the other whether the Government is bound to issue the notification under s. 6 without reasonable delay after the issue of the notification under s. 4.

In the High Court, the appellants contended that the public purpose set out in the notification dated August 14, 1964 was

different from the public purpose set out in the notification dated July 18, 1961 and the Government could not issue the notification dated August 14, 1964 without issuing a fresh notification under s. 4. The High Court repelled this contention. It found that the public purpose set out in the notification dated August 14, 1964 was identical with the public purpose set out in the notification dated July 18, 1961. This finding is no longer challenged before us. A B

The appeal fails, and is dismissed with costs.

Appeal dismissed.