A STATE OF GUJARAT

v.

BHOGILAL KESHAVLAL & ANR.

November 27, 1979

B [P. N. SHINGHAL AND A. P. SEN, JJ.]

Land Acquisition Act, 1894, *Sections* 4 & 6— *Scope of.*

The first respondent owned certain Land forming part of a town planning scheme, situated within the city limits. At the request of the second respondent, a Cooperative Housing Society, the State Government issued a Notification C under section 4 of the Act on August 3, 1960 stating that the land was likely to be needed for a public purpose and it was followed by a further notification of the State Government under Section 6 of the Act dated August 21, 1961 that the land was to be acquired at the expense of the Cooperative Housing Society for the public purpose specified in column 4 of the Schedule to the notification. The entire expense of the acquisition was to be borne by the second respondent.

D The first respondent moved the High Court under Article 226 of the Constitution challenging the valadity of the notification under section 6 of the Act. During the pendency of the Writ Petition, the appellant by a notification dated May 27, 1963 cancelled the earlier notification under section 6 and issued a fresh notification. The High Court struck down the second notification dated September 10, 1964 issued under section 6 of the Act. In the appeal to this E Court, on the question of the validity of the 2nd notification dated September 10, 1964.

HELD : (i) The High Court was in error in striking down the second notification under section 6 of the Act issued on September 10, 1964.

(ii) This Court in *Valjibhai Muljibhai Soneji* v. *State of Bombay* [1964] 3 S.C.R. 686 has held that the Government has no power to issue a notification F for acquisition of land for a public purpose, where the compensation is to be entirely paid by a company. [287 C-D]

In the instant case the first notification issued by the Government for acquisition of land for a public purpose at the expense of the second respondent, the cooperative society was therefore, invalid and the Govt. was justified in issuing the second notification under section 6 after removing the lacuna by G providing for acquisition of the land for public purpose, at public expense. [287 D-E]

(iii) The acquisition of land for cooperative housing society is a public purpose. The Govt. is the best judge to determine whether the purpose in question is a public purpose or not. It cannot be said that a Housing Scheme for a limited number of persons cannot be construed to be a public purpose. When a notification under section 6 of the Act is invalid, the Govt. may treat it H as ineffective and issue a fresh notification under stction 6 of the Act and nothing in section 48 of the Act precludes the Government from doing so. [291 C-E]

Girdharilal Amratlal Shodan & Ors. v. *State of Gujarat & Ors.* [1966] 3 S.C.R. 437, *Sham Behari & Ors.* v. *State of Madhya Pradesh & Ors.* [1964] 6 S.C.R. 636, *Pandit Jhandu Lal & Ors.* v. *The State of Punjab & Ors.* [1961] 2 S.C.R. 459 *Ratilal Shankarbhai & Ors.* v. *State of Gujarat & Ors.* A.I.R. 1970 S.C. 984, *Ram Swarup* v. *The District Land Acquisition Officer, Aligarh & Ors.* A.I.R. 1972 SC 2390, referred to.

(iv) In the instant case, the Respondent had not taken any ground in the Writ Petition with regard to the delay in the issuance of the second notificaton. The High Court was therefore, not justified in observing that "the appellant had not explained the delay by filing any affidavit." If there was no ground taken, there could be no occasion for filing of any such affidavit. [292 B-C]

(v) There is nothing in the Act which precludes the Govt. from issuing a fresh notification under s. 6 of the Act if the earlier notification is found to be ineffective. The delay of one year and four months between the date of cancellation and the issue of the second notification cannot be regarded to be unreasonable. [292 E-F]

Gujarat State Transport Corpn. v. *Valji Mulji Soneji* [1979] 3 S.C.R. 202, referred to

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1479 of 1971.

From the Judgment and Order dated 25-4-1969 of the Gujarat High Court in SCA No. 271/65.

G. A. Shah, N. S. Pande and *M. N. Shroff* for the Appellant.

P. R. Mridul, Vimal Dave and *Miss Kailash Mehta* for Respondent No. 1.

I. N. Shroff and *H. S. Parihar* for Respondent No. 2.

The Judgment of the Court was delivered by

SEN, J.—This appeal on certificate from a judgment of the Gujarat High Court raises a question as to the validity or otherwise of a fresh notification issued by the Government of Gujarat under s. 6 of the Land Acquisition Act, 1894, consequent upon an earlier notification under s. 6 of the Act being discovered to be invalid.

The first respondent in this case owned certain land bearing Final Plot No. 38 forming part of Town Planning Scheme No. III (Ellisbridge) situate within the city of Ahmedabad. At the request of the second respondent Sri Ayodhya Nagar Co-operative Housing Society Ltd., registered under the Bombay Co-operative Societies Act, 1925, now deemed to be registered under the Gujarat Co-operative Societies Act, 1961, formed with the object of enabling its members to construct houses, the State Government on August 3, 1960 issued a notification

A under s. 4 stating that the land was likely to be needed for a public purpose. This was followed by a notification of the State Government dated August 21, 1961 under s. 6 of the Act stating that the land was to be acquired at the expense of Sri Ayodhya Nagar Co-operative Housing Society Ltd. for the public purpose specified in column 4 of the schedule annexed thereto. The public purpose specified in column 4 of the schedule was 'For construction of houses for Sri Ayodhya Nagar Co-operative Housing Society Ltd., Ahmedabad.' The entire expense of the acquisition was to be borne by the second respondent, i.e., the Co-operative Housing Society. The first respondent moved the High Court under Art. 226 of the Constitution challenging the validity of the notification under s. 6 on the ground that the acquisition of the land for a public purpose at the expense of the second respondent was legally invalid. On December 4, 1961 the High Court issued an *ad interim* injunction restraining the appellant from proceeding with the acquisition proceedings. While this writ petition was pending, the State Government by its notification dated May 27, 1963 cancelled the notification under s. 6. On September 10, 1964 the State Government issued a fresh notification under s. 6 stating that the land was to be acquired at the public expense, for the public purpose specified in column 4 of the schedule. The public purpose specified in column 4 in the schedule was 'For housing scheme undertaken by Sri Ayodhya Nagar Co-operative Housing Society Ltd.'

The High Court following its earlier decision in *Dosabhai Ratansha Keravala* v. *State of Gujarat & Ors.*(1) struck down the second notification under s. 6 dated September 10, 1964. It held *inter alia* that (1) the first notification under s. 6 issued on August 21, 1961 being an acquisition for a society at its cost, was valid and the Government could have proceeded to complete the acquisition under it but, under a false sense of apprehension as to its validity, the Government cancelled it on May 27, 1963. There was no justification for cancelling the first notification under s. 6 and even if the Government wanted to cancel it out of a feeling of apprehension as to its validity, the Government need not have taken one year and ten months to do so. (2) After the issue of the first notification under s. 6 on August 21, 1961, the notification dated August 3, 1960 under s. 4 was exhausted and, therefore, could not be used to support the second notification issued under s. 6 on September 11, 1964. (3) The cancellation of the first notification under s. 6 by the notification dated May 27, 1963 did not have the effect of reviving the notification under s. 4 so as to make it available for supporting the second notification under s. 6. The second notifi-

(1) (1970) 11 Guj. L.R. 361.

cation under s. 6 not being supported by any notification under s. 4 was consequently invalid. (4) A notification under s. 6 in order to be valid must follow within a reasonable time after the issue of a notification under s. 4. The notification under s. 4 was issued on August 3, 1960 and the second notification under s. 6 on September 10, 1964 and there was thus an interval of about four years and one month between the two notifications. This interval of time could not be regarded as reasonable. Even tested by the yardstick of reasonable time provided by the legislature in the second proviso introduced in s. 6 by the Land Acquisition (Amendment and Validation) Act, 1967, namely three years, the period of about four years and one month between the two notifications under s. 4 and s. 6 would be clearly unreasonable. The second notification must, therefore, be held to be invalid on this ground also.

We are clearly of the opinion that the High Court was in error in striking down the second notification under s. 6 issued on September 10, 1964. In *Valjibhai Muljibhai Soneji* v. *State of Bombay*(1) the Court held that the Government has no power to issue a notification for acquisition of land for a public purpose, where the compensation is to be entirely paid by a company. The first notification issued by the Government under s. 6 for acquisition of the land for a public purpose, at the expense of the second respondent, the Co-operative Society, was, therefore, invalid. The State Government was, therefore, justified in issuing the second notification under s. 6 after removing the lacuna i.e., by providing for acquisition of the land for the said public purpose, at public expense.

In an endeavour to support the judgment, counsel for the first respondent advanced a three-fold contention. It was urged, firstly, that successive notifications cannot be issued under s. 6 placing reliance on *State of Madhya Pradesh & Ors.* v. *Vishnu Prasad Sharma & Ors.*(2) It was pointed out that the Land Acquisition (Amendment and Validation) Act, 1967 had a limited scope and it validated only successive notifications issued under s. 6 in respect of different parcels of land but did not validate successive notifications in respect of the same land. Further, it was urged that the Act was not retrospective in operation and, therefore, the validity of the second notification dated September 10, 1964 had to be adjudged with reference to the pre-amendment law, i.e., according to the law as declared by this Court in *Vishnu Prasad Sharma's case*. Secondly, it was urged, on the strength of the deci-

(1) [1964] 3 S.C.R. 686.
(2) [1966] 3 S.C.R. 557.

A sion in *Dosabhai Ratansha Karevala's case* (supra) that a notification under s. 4 is exhausted when it is followed by declaration under s. 6. It was urged that the first notification under s. 6 dated August 21, 1961 was valid and the High Court was, therefore, justified in holding that with its cancellation, the notification under s. 4 lapsed. Thirdly, it was urged that there was unreasonable delay in issuing the second B notification under s. 6 and, this, by itself, was sufficient to invalidate it.

In *Vishnu Prasad Sharma's case* the Court held that ss. 4, 5-A and 6 are integrally connected and present a complete scheme for acquisition and, therefore, it was not open to the Government to make suc- C cessive declarations under s. 6. Wanchoo J. (as he then was), speaking for himmself and Mudholkar J., observed :

> "It seems to us clear that once a declaration under s. 6 is made, the notification under s. 4(1) must be exhausted, for it has served its purpose. There is nothing in ss. 4, 5-A D and 6 to suggest that s. 4(1) is a kind of reservoir from which the government may from time to time draw out land and make declarations with respect to it successively. If that was the intention behind sections 4, 5-A and 6 we would have found some indication of it in the language used therein. But as we read these three sections together we can E only find that the scheme is that s. 4 specifies the locality, then there may be survey and drawing of maps of the land and the consideration whether the land is adapted for the purpose for which it has to be acquired, followed by objections and making up of its mind by the government what particular land out of that locality it needs. This is followed F by a declaration under s. 6 specifying the particular land needed and that in our opinion completes the process and the notification under s. 4(1) cannot be further used thereafter. At the stage of s. 4 the land is not particularised but only the locality is mentioned; at the stage of s. 6 the land in the locality is particularised and thereafter it seems to us G that the notification under s. 4(1) having served its purpose exhausts itself."

Sarkar J., in a separate but concurring judgment, observed :

> "My learned brother has said that ss. 4, 5A and 6 of the H Act have to be read together and so read, the conclusion is clear that the Act contemplates only a single declaration under. s. 6 in respect of a notification under s. 4."

After rejecting the contention that the Government may have difficulty in making the plan of its projects complete at a time, particulaly where the project is large, and therefore, it is necessary that it should have power to make successive declarations under s. 6, he observed :

> "I cannot imagine a Government, which has vast resources, not being able to make a complete plan of its project at a time. Indeed, I think when a plan is made, it is a complete plan. I should suppose that before the Government starts acquisition proceedings by the issue of a notification under s. 4, it has made its plan for otherwise it cannot state in the notification, as it has to do, that the land is likely to be needed. Even if it had not then completed its plan, it would have enough time before the making of a declaration under s. 6 to do so. I think, therefore, that the difficulty of the Government, even if there is one, does not lead to the conclusion that the Act contemplates the making of a number of declarations under s. 6."

In the present case, the question, however, does not arise as the first notification under s. 6 dated August 21, 1961 being invalid, the Government was not precluded from making a second notification. Due to the invalidity of the notification under s. 6, the notification under s. 4 still held the field and on its strength another notification under s. 6 could be issued. It is, therefore, not necessary to deal with the effect of the validating Act.

The matter is squarely covered by the decision of the Court in *Girdharilal Amratlal Shodan & Ors. v. State of Gujarat & Ors.*(1) The Court rejected the contention that by cancelling the first notification under s. 6, as here, the Government must be taken to have withdrawn from the acquisition and consequently could not issue a second notification under s. 6. There also the first notification under s. 6 was invalid and of no effect, as 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, as held by this Court in *Sham Behari & Ors.* v. *State of Madhya Pradesh & Ors.*(2).

It will be noticed that in *Girdharilal Amratlal Shodan's* case the facts were identical. On August 3, 1960 the Government of Gujarat issued a notification under s. 4 in respect of certain land falling in Final Plot No. 460 of the Town Planning Scheme No. III of Elisbridge in the city of Ahmedabad, stating that the land was likely to be needed for a public purpose, viz., for construction of houses for Sri Krishna-

(1) [1966] 3 S.C.R. 437.
(2) [1964] 6 S.C.R. 636.

A kunja Government Servants' Co-operative Housing Society Ltd. On July 18, 1961 the State Government issued a notification under s. 6 stating that the land was to be acquired for the aforesaid public purpose at the expense of Sri Krishnakunj Government Servants' Co-operative Housing Society Ltd. On September 22, 1961, the landholder filed a writ petition in the High Court for an order quashing the notification B under s. 6. During the pendency of the proceedings, 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 notification under s. 6 stating that the land was needed to be acquired C at the public expense for a public purpose viz., for the housing scheme undertaken by Sri Krishnakunj Government Servants' Co-operative Housing Society Ltd.

The contention was that by cancelling the first notification under s. 6, the Government must be deemed to have withdrawn from the acquisition and cancelled the notification under s. 4, and therefore, D could not issue the second notification under s. 6, without issuing a fresh notification under s. 4. It was also urged that 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. The Court rejected both the contentions observing :

E "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 F 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 G 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 28, 1964. The cancellation was in recognition of the invalidity of the notification. The H Government had no intention of withdrawing from the acquisition. Soon after the cancellation, the Government issued a fresh notification under s. 6 whereas in this case the notifi-

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cation 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."

The first notification issued under s. 6 on August 21, 1961 was obviously invalid and of no effect. By the issue of this notification, the Government had not effectively exercised its powers under s. 6. In the circumstances, the Government could well issue a fresh notification under s. 6 dated September 10, 1964.

In *State of Gujarat* v. *Musamiyan Imam Haider Bux Razvi & Anr. etc.*(1) this Court while reversing the decision of the Gujarat High Court in *Dosabhai Ratansha Kerravala* (supra) on which the High Court based its decision, has laid down two important principles : (1) In view of the decisions of this Court in *Pandit Jhandu Lal & Ors.* v. *The State of Punjab & Ors.*,(2) *Ratilal Shankarbhai & Ors.* v. *State of Gujarat & Ors.*(3) and *Ram Swarup* v. *The District Land Acquisition Officer, Aligarh & Ors.*(4) the acquisition of land for a co-operative housing society is a public purpose. The Government is the best Judge to determine whether the purpose in question is a public purpose or not; and, it cannot be said that a housing scheme for a limited number of persons cannot be construed to be a public purpose inasmuch as the need of a section of the public may be a public purpose. (2) When a notification under s. 6 is invalid, the government may treat it as ineffective and issue a fresh notification under s. 6, and nothing in s. 48 of the Act precludes the government from doing so, as held by this Court in *Girdharilal Amratlal Shodan.*

The High Court had not the benefit of these decisions when it held that acquisition of land for a co-operative housing society was not a public purpose and, therefore, the first notification dated August 21, 1961 issued under s. 6 of the Act was valid. The *substratum* on which the decision of the High Court rests has, therefore, disappeared. This Court in *Musamiyan's case* distinguished the decision in *State of Madhya Pradesh & Ors.* v. *Vishnu Prasad Sharma & Ors.* (supra) by quoting the passage referred to above. The decision in *Vishnu Prasad Sharma's case* is not an authority for the proposition that where a notification under s. 6 is found to be invalid it cannot be followed by a fresh notification under s. 6. In fact, the decision of the High Court

(1) [1976] Supp. S.C.R. 28.
(2) [1961] 2 S.C.R. 459.
(3) A.I.R. 1970 S.C. 984.
(4) A.I.R. 1972 S.C. 2390.

runs counter to what it had observed in *Dosabhai Ratansha Keravala's case,* after referring to the decisions of this Court in *Vishnu Prasad Sharma's* case and *Girdharilal Amratlal Shodan's case* :

> "If the first s. 6 notification is invalid, that is, *non est,* s. 4 notification cannot be regarded as exhausted, for its purpose is yet unfulfilled; its purpose could be fulfilled only by issue of a valid notification under s. 6."

There remains the question whether the High Court was right in quashing the second notification under s. 6 on the ground of unreasonable delay in its issuance. The respondent had not taken any such ground in the writ petition filed by him. The High Court was, therefore, not justified in observing that 'the appellant had not explained the delay by filing any affidavit'. We fail to appreciate that if there was no ground taken, there could be no occasion for filing of any such affidavit. Further, the delay, if any, was of the respondent's own making. He had challenged the first notification under s. 6, presumably on the ground that the acquisition being for a public purpose, could not be made at the expense of the second respondent. The challenge was justified and the State Government, therefore, withdrew the first notification under s. 6 without waiting for an order of the High Court. The cancellation was in recognition of the invalidity of the notification. The Government had no intention of withdrawing from the acquisition. Thereafter, the Government issued a fresh notification under s. 6 making a declaration for acquisition of the land for a public purpose at public expense. There is nothing in the Act which precludes the Government from issuing a fresh notification under s. 6, if the earlier notification is found to be ineffective. The delay of one year and four months between the date of cancellation and the issue of the second notification cannot be regarded to be unreasonable, in the facts and circumstances of the case. In somewhat similar circumstances, this Court recently in *Gujarat State Transport Corpn.* v. *Valji Mulji Soneji*(1) held the delay of about fifteen years in making the second notification under s. 6 not to be unreasonable. We cannot, therefore, uphold the High Court's decision that the second notification must be struck down on the ground of delay.

In the result, the appeal succeeds and is allowed with costs, the judgment of the High Court is set aside, and the writ petition filed by the first respondent is dismissed. Respondent No. 1 shall bear the costs.

N.K.A. *Appeal allowed.*

(1) [1979] 3 S.C.R. 202.