VIJAY COTTON & OIL MILLS LTD.

v.

THE STATE OF GUJARAT

September 11, 1968

[S. M. SIKRI, R. S. BACHAWAT AND K. S. HEGDE, JJ.]

Land Acquisition Act, 1894, *ss.* 4(1) *and* 6(1)—*Declarations under—Circumstances in which a declaration only under s.* 6(1) *may be treated as a composite declaration under ss.* 4(1) *and* 6(1).

In 1949 the Government took possession of certain land belonging to the appellant under an arrangement whereby the Government was to give to the appellant in exchange other suitable lands of equal value. After the Government had constructed some buildings on the land, it decided to acquire the land compulsorily. On February 1, 1959, the Government issued a notification under s. 6(1) of the Land Acquisition Act, 1894, declaring that the land was needed for public purposes and stating that possession of the land had already been taken. The Collector made an award on April 22, 1957 but the appellant objected to the amount of compensation and the Collector, on his application, made a reference to the Court under s. 18. At the hearing of the reference before the District Judge, the Government conceded that the appellant was entitled to the market value of the land as on February 1, 1955 and the District Judge awarded compensation accordingly. Thereafter the Government filed an appeal in the High Court and contended that in the absence of a notification under s. 4(1); no compensation could be awarded to the appellant. The High Court allowed the appeal and set aside the order of the District Judge.

On appeal to this Court,

HELD : Allowing the appeal :

The Government having constructed buildings on the land was not in a position to restore it and had no option but to acquire it compulsorily. With a view to make the acquisition the Government published a notification under sec. 6(1) on February 1, 1955. On finding that there was no separate notification under sec. 4(1) the Government had a choice between two courses. It could say that in the absence of such a notification the acquisition was invalid and that no compensation could be awarded under sec. 23. If it did so it would be compelled to start fresh acquisition proceedings and pay a larger sum by way of compensation. The other course was to treat the notification of February 1, 1955 as a composite one under sections 4(1) and 6(1) with the consent of the appellant and to say that the market value of the land on that day could be awarded by way of compensation. The Government elected to choose the latter course and the appellant agreed to accept compensation on that footing. Having regard to the consent of both parties, it could properly be assumed that the procedure of s. 5A had been waived by the appellant and that the notification of February 1, 1955 could be treated as a composite one under ss. 4(1) and 6(1). The District Judge could therefore lawfully award the market value of the land on that day. [63 C-G]

Somavanti v. *State of Punjab*, [1963] 2 S.C.R. 775, 821-823 and *Toronto Corpr.* v. *Russell*, [1908] A.C. 493; referred to.

A Furthermore, relying on the concession made by the Government the appellant had acted to its detriment in that it did not challenge the acquisition and the Government had come to be in adverse possession of the land for more than 12 years. In these circumstances the Government could not be permitted to resile from the election which it deliberately made and to say that the appellant was not entitled to the market value of the land on February 1, 1955. [63 G-H]

B *Rama Charan Chakrabarty* v. *Nimai Mondal,* 15 C.L.J. 58; referred to.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1948 of 1966.

Appeal from the judgment and decree dated March 22, 1965 of the Gujarat High Court in First Appeal No. 718 of 1960.

C *Purshottam Trikamdas, M. H. Chhatrapati* and *A. K. Varma,* for the appellant.

G. L. Sanghi, Urmila Kapur and *S. P. Nayar,* for the respondent.

The Judgment of the Court was delivered by

D **Bachawat, J.** The appellant was the owner of land bearing survey No. 910 situated on the Bhachau-Rahapur Road in Kutch District. In November 1949 the Government of Kutch took possession of the land under an arrangement that the Government would give to the appellant in exchange other suitable lands of equal value. On that date Kutch was part of the territory of E India and the Land Acquisition Act, 1894 was in force there. After taking possession of the land the Government constructed thereon the State Guest House and the Court House. Thereafter the Government was neither willing to return the land nor to give other suitable land in exchange and instead it decided to acquire the land compulsorily. On February 1, 1955 the Government F issued a notification under sec. 6(1) of the Land Acquisition Act declaring that the land was needed for public purposes stating that possession of the land had already been taken over and directing the Collector to take action under sec. 7. The necessary action was duly taken and in due course the Collector made his award on April 22, 1957. The appellant objected to the amount of compensation and asked the Collector to make a reference to G the Court under sec. 18. The Collector duly made the reference. At the hearing of the reference before the District Judge, Kutch, the Government conceded that the appellant was entitled to the market value of the land as on February 1, 1955. The District Judge awarded compensation accordingly. The Government filed an appeal in the High Court. At the hearing of the H appeal the Government contended that in the absence of a notification under sec. 4(1), no compensation could be awarded to the appellant. The High Court accepted the contention and observed that the appellant would be at liberty to contend in other proceed-

ings that the acquisition was bad in the absence of a notification under sec. 4(1). In this view of the matter the High Court allowed the appeal and set aside the order of the District Judge. The present appeal has been filed after obtaining a certificate from the High Court.

The main question arising in this appeal is whether the Government can take up inconsistent positions in Court at successive stages of the same litigation to the detriment of its opponent and whether having conceded before the District Judge that the appellant was entitled to the market value of the land on February 1, 1955 it could at the appellate stage resile from that position and contend that there was no notification under sec. 4(1) on that date and that consequently its opponent was not entitled to any compensation.

The scheme of the Land Acquisition Act is well-known. If the Government desires to acquire land, it has to issue a preliminary notification under sec. 4(1) declaring that the land is needed or is likely to be needed for any public purpose. This notification has to be issued in order to give an opportunity to all persons interested in the land under s. 5A(1) to object to the acquisition within 30 days after the issue of the notification. After hearing the objections the Collector has to make a report under sec. 5A(2). On considering this report the Government may issue a notification under sec. 6(1) declaring that the land is needed for a public purpose. In cases covered by sec. 17(4) the Government may direct that the provisions of sec. 5A shall not apply and if it does so a declaration may be made under sec. 6(1) at any time after the publication of the notification under sec. 4(1). When the Collector has made an award under sec. 11, he may under sec. 16 take possession of the land which thereupon vests in the Government. Section 18 requires the Collector to make a reference to Court on the application of any person interested in the land who has not accepted the award. It is the market value of the land at the date of the publication of the notification under sec. 4(1) that can be awarded as compensation by the Collector under sec. 11 and by the Court under sec. 23. These provisions show that the issue of the notification under sec. 4(1) is a condition precedent to the acquisition of the land. Where the procedure under sec. 5A has to be followed, there must necessarily be an interval of time between the issue of the notification under sec. 4(1) and the notification under sec. 6(1). But where sec. 5A does not stand in the way, the prior publication of a notification under sec. 4(1) is not a condition precedent to the publication of a notification under sec. 6(1). For this reason this Court held in *Somavanti* v. *State of Punjab*(1) that where an order was passed

(1) [1963] 2, S.C.R. 775, 821-823.

A under sec. 17(4) dispensing with the procedure under sec. 5A, it was lawful for the Government to publish both the notifications on the same date.

The procedure under sec. 5A being entirely for the benefit of the persons interested in the land they may waive it, see *Toronto Corpr.* v. *Russel*(1). As stated in Halsbury's Laws of England, 3rd ed., Vol. 36, p. 444 : "A statutory right which is granted as a privilege may be waived either altogether or in a particular case." If all persons interested in the land waive the benefit of the procedure under sec. 5A the Government may lawfully issue a composite notification under secs. 4(1) and 6(1).

C In this background let us examine the facts of the present case. The Government having constructed buildings on the land was not in a position to restore it and had no option but to acquire it compulsorily. With a view to make the acquisition the Government published a notification under sec. 6(1) on February 1, 1955. On finding that there was no separate notification under sec. 4(1) the Government had a choice between two courses of D conduct. It could say that in the absence of such a notification the acquisition was invalid and that no compensation could be awarded under sec. 23. If it did so it would be compelled to start fresh acquisition proceedings and pay a larger sum by way of compensation. The other course was to treat the notification of February 1, 1955 as a composite one under secs. 4(1) and 6(1) E with the consent of the appellant and to say that the market value of the land on that day could be awarded by way of compensation. The Government elected to choose the latter course. At the hearing of the reference, it conceded that the appellant was entitled to the market value of the land on February 1, 1955. The appellant agreed to accept compensation on that footing. Having F regard to the consent of both parties, it could properly be assumed that the procedure of s. 5A had been waived by the appellant and that the notification of February 1, 1955 could be treated as a composite one under ss. 4(1) and 6(1). The District Judge could therefore lawfully award the market value of the land on that day. Relying on the concession made by the Government, G the appellant acted to its detriment. It did not challenge the acquisition and took no steps to recover the land. The result is that the Government has been in adverse possession of the land for more than 12 years since 1949 and has gained an advantage which it could not otherwise obtain. In these circumstances the Government cannot be permitted to resile from the election which it deliberately made and to say that the appellant is not entitled H to the market value of the land on February 1, 1955. A party litigant cannot be permitted to take up inconsistent positions in

(1) [1908] A.C. 493.

Court to the deteriment of his opponents [see *Rama Charan Chakrabarty v. Nimai Mondal*(1), Bigelow on Estoppel, 6th ed., page 783]. He cannot approbate or reprobate (*see* Halsbury's Laws of England, 3rd, ed., vol. 15 art. 340). The concession cannot now be retracted. The High Court should have disposed of the appeal before it on the footing that the appellant is entitled to the market value of the land on February 1, 1955. As the High Court did not hear the appeal on the merits, the matter must be remanded to it for final disposal.

In the result, the appeal is allowed, the order of the High Court is set aside and the matter is remanded to the High Court for disposal on the merits. The respondent shall pay to the appellant the costs of the appeal in this Court.

R.K.P.S. *Appeal allowed.*

(1) 15 C.L.J. 58.