Supreme Court of India
Gujarat State Transport ... vs Valji Mulji Soneji And Ors on 3 May, 1979
Equivalent citations: 1980 AIR 64, 1979 SCR (3) 905
Author: D Desai
Bench: Desai, D.A.

PETITIONER:
GUJARAT STATE TRANSPORT CORPORATION, ETC.

Vs.

RESPONDENT:
VALJI MULJI SONEJI AND ORS.

DATE OF JUDGMENT03/05/1979

BENCH:
DESAI, D.A.
BENCH:
DESAI, D.A.
REDDY, O. CHINNAPPA (J)

CITATION:
1980 AIR 64 1979 SCR (3) 905
1979 SCC (3) 202
CITATOR INFO :
R 1980 SC 367 (13)
F 1990 SC1232 (3)

ACT:
Land Acqusition Act, 1894, Sections 4 and 6-Validity of Section 6 Notification struck down by the Supreme Court after 13 years of legal battle intrtaties-Consequent to the decision second notification under Section 6 issued on 10-10-1967 after gving fresh notice under Section 5A and personal hearing of the parties-Whether the second notification is hit by the postulate that "every statutory power must be exercised reasonably"-Effect of the Land Acquisition (AmenJment and Validation) Act 1967 introducing amendments to Section 4(2) aan proviso to Setion 6.

Legal Representatives to be brought on record-Civil Procedure Code, 1908-Making an application under Order XXII Rule 10 instead of under Order XXXI Rule 4 is not correct.

HEADNOTE:
A suit (No. 1262/53) Challenging the notification under Section 4 of the Land Acquisition Act dated 10-10-1952 issued by the former Government of Bombay and later another notification under Section 6 of the Act dated 14-8-1953 (issued during the pendency of the suit), notifying that the

final plots Nos. 41. 42 and 43 were required for public purpose viz. State Transport-was dismissed by the Trial Court on 28-1-1959. The first and the second appeals having failed, the respondents came up to this Court. This Court in its decision inter partes, Valji Bhai's case struck down Section 6 notification on the ground that the acquisition being for the benefit of a Corporation, though for a public purpose was bad beeause no part of the compensation was to come out of the public revenue and the provisions of Part VII of the Act had not been complied with.

After the bifurcation of the erstwhile State of Bombay, the land acquisition proceedings came within the cognizance of Gujarat State. The State by its letter dated 22-8-1966 decided to contribute towards compensation a sum of Re. 1/- which was subsequently raised to Rs. 500/-. The Government felt that as long time has elapsed since the earlier report under Section 5A was submitted by the Collector, a fresh enquiry should be made. Accordingly the Additional Special Land Acquisition Officer issued a notice dated 1-8-1966 intimating to the respondents that if they so desired they might submit their further objections on or before 16-8-1966. Complying with this notice, the respondents submitted further objections on 31-8-1966 and they were also given a personal hearing. After examining the enquiry report submitted by the enquiry officer the Government of Gujarat issued a notification under Section 6 on 10-10-1967.

The respondents questioned the validity and legality of this notification in the writ petition filed by them on 14-2-1968 on the only ground that it was issued more than 15 years after the date of Section 4 notification. The High Court was of the opinion that if the power to make a declaration under Section
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6 is exercised after an unreasonable delay from the date on which notification under Section 4 is issued such exercise of power would be invalid and it accordingly struck down the notification under Section 6 of the Act. Hence the two appeals one by the State of Gujarat and the other by the Gujarat State Road Transport Corporation.

Allowing the appeals by certificate, the Court
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HELD: 1. The impugned section 6 notification was issued within the prescribed period introduced by the 1967 Amendment Act and, therefore could not be struck down on the only ground that the power to issue second section 6 notification was exercised after an unreasonable and unexplained delay. Section 6 notification, dated 10th october 1967, therefore is valid and legal.[918G-H, 919A]

2. A combined reading of the provisions contained in sub-section (2) of Section 4 with the one contained in the proviso to sub-section (1) of Section 6 introduced by the Land Acquisition (Amendment and Validation) Act, (Central Act 13 of 1967) with effect from 20-1-1967 would make it

clear that the Government would be precluded from making a declaration under section 6 after the expiry of a period of three years from the date of issue of a notification under Section 4 which may be issued after the Amendment Act came into force. And in respect of those section 4 notifications which were issued prior to the commencement of the Ordinance i.e. 20-1-1967, any notification which is required to be issued under section 6 must be made within a period of two years whereafter as a necessary corollary all s. 4 notifications issued prior to 20th January 1967 would stand exhausted and would not provide either a source of reservoir for issuing s. 6 notification. Consequently the mischief sought to be set at naught by the High Court by reading by necessary implication in the scheme of ss. 4, 5A, and 6 the concept of exercise of statutory power within a reasonable time has been statutorily remedied. The apprehensions of the High Court that if not checkmated by implying that such statutory power must be exercised within a reasonable time to curb arbitrary exercise of power to the detriment of a citizen have been taken note of by the legislature and fully met. Absence of any decided case on the subject of which High Court took note could not permit an inference as has been done by the High Court that in the absence of a decided case the legislature would not remedy the possible mischief. Legislature often does take note of a possible abuse of power by the executive and proceed to nip it in the bud by appropriate legislation and that has been done in this case. There is now no more possibility of a gap of more than three years from the date on which s. 4 notification is issued, otherwise it would be invalid as being beyond the prescribed period. [916 G-H, 917 A-D]

In the instant case, the notifications under section 4 was prior to the commeneement of the ordinance. Therefore, the provision contained in sub-section (2) of section 4 of the 1967 Amendment Act would be directly attracted. The Government could, therefore, make a declaration within a period of two years from 20th January 1967. The Government has in fact issued the impugned notification under section 6 on 10th October 1967 i.e. within the period prescribed by the Statute. [917 E-F]

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3.When a period is prescuibed for exercise of power it manifests the legislative intention that the authority exercising the power within the prescribed time could not at least be accused of inaction or dithering and, therefore, such exercise of power could not be said to be bad or invalid on the only ground that there was unreasonable delay in the exercise of the power. The very prescription of time inheres a belief that the nature and quantum of power and the manner in which it is to be exercised would consume at least that much time which the statute prescribes as reasonable and, therefore, exercise of power within the time could not be negatived on the only ground of unreasonable

delay. [917H, 918 A-B]

Therefore, in this case, there was no unreasonable delay in exercise of power and hence the exercise was neither bad nor invalid. [918B]

4. Once the legislature stepped in and prescribed a sort of limitation within which power to issue notification under section 6 could be exercised, it was not necessary to go in search of a further fetter on the power of the Government by raising the implication. [918F-G]

In this case, the High Court by implication read a fetter on the power of the Government to issue s. 6 notification within a reasonable time after the issue of s. 4 notification after observing that there was no express provision that such power ought to be exercised within a reasonable time. In raising this impliccation the High Court took into account the postulate that every statutory power must be exercised reasonably and a reasonable exercise of power implies its exercise within a reasonable time. Coupled with it two other factors were taken into consideration such as the effect of issuing a s. 4 notification on the rights and obligations of the owner of the land whose land is proposed to be acquured; the right of the Government to unilaterally cancel s. 4 notification in the event of fall in prices; history of legislation; and delayed issue of s. 6 notification would deny adequate compensation to the owner. But by the time the High Court examined this matter the legislature had already introduced a provision by which the power to issue s. 6 notification was to be exercised within the prescribed period of time. At that stage there hardly arose a question of a search of the fetter on the power of the Government ignoring to some extent the express statutory provision. [918C-F]

5. In the case of death of a party to a proceeding who is joined in his capacity as Karta of an undivided Hnndu family, if the undivided Hindu family continues to be in existence the succeeding Karta can be substituted for the deceased Karta of the family and that would be sufficient compliance with Order XXII Rule 4 of C.P.C. [911D-E]

In the insant case an application made under Order XXII Rules 10 C.P.C. made after the prescribed period of limitation and in order to avoid seeking condonation of delay for setting aside abatement is not correct. [911E]

[The Court, however, overruled the objection on this ground since the L.rs. have already been substituted].

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal Nos. 2316/69 and 1598/70.

From the Judgment and order dated 14/17/18th March, 1969 of the Gujarat High Court in S.C.A. No. 729/68.

R. H. Dhebar and M. N. Shroff for the Appellants in C.A. 2316/69.

D. V. Patel, M. V. Goswami and Ambrish Kumar for RR 1-5 in C.A. 2316/69 and RR. 1-4 in C.A. No. 1598/70.

The Judgment of the Court was delivered by DESAI, J.-These two appeals by certificate under article 133(1)(c) of the Constitution arise from a judgment rendered by the Gujarat High Court in Special Civil Application No. 720/68, being a petition under article 226 of the Constitution challenging the validity of a notification issued by the Government of Gujarat on 10th october 1967 under section 6 of the Land Acquisition Act, 1894 ('Act' for short). Civil Appeal No. 2316/69 is preferred by the original respondent No. 2 Gujarat State Transport Corporation, and the cognate Civil Appeal No. 1598/70 is preferred by the State of Gujarat, the first respondent in the petition. As both the appeals arise from the same proceedings and raise identical contentions they were heard together and are being disposed of by this common judgment.

A notification under s. 4 of the Act was issued by the former Governent of Bombay on 10th October 1952 notifying that final plots 41, 42 and 43 were likely to be needed for a public purpose, viz., State Transport. The respondents who are tenants of different parcels of land comprised in the aforementioned final plots objected to the proposed acquisition. Soon after filing the objections under s. 5A of the Act the respondents fild Civil Suit No. 1262/53 in the Court of Civil Judge, Second Division, Ahmedabad, for a declaration that the notification under s. 4 was illegal and ultra vires and for an injunction restraining the respondent State from proceeding with the acquisition of the lands in possession of the respondents. During the pendency of this suit the then Government of Bombay, after considering the report submitted under s. 5A, made a declaration under s. 6 as per the notification dated 14th August 1953 declaring, inter alia, that final plots 41, 42 and 43 were required for the purpose of State Transport. The respondents amended their plaint adding a relief for quashing the notification under s. 6. The suit filed by the petitioners was dismissed by the trial court and first and second appeals did not meet with success. They carried the matter to this Court and succeeded as per judgment reported in Valjibhai Muljibhai Soneji & Anr. v. The State of Bombay (now Gujarat) & Ors.(1). As per that judgment this Court decreed the plaintiff's suit which would imply that this Court quashed both notifications under ss. 4 and 6. Reading the judgment as a whole it appears that the validity of s. 4 notification was upheld and only the notification under s. 6 was struck down. In the mean timn on the bifurcation of the erstwhile State of Bombay these land acquisition proceedings came within the cognizance of Government of Gujarat and when the State Government became aware some where in 1965 about the error in the decree, Review Applications Nos. 11 and 12 of 1965 were made for correcting the decree. This Court granted the applications and modified the decree on 13th September 1965.

The Government taking its clue from the judgment of this Court which invalidated s. 6 notification on the ground that the acquisition having been made for the benefit of a Corporation, though for public purpose, is bad because no part of the compensation is to come out of the public revenue and

provisions of Part VII of the Land Acquisition Act have not been complied with, decided as per its letter dated 22nd August 1966 to contribute Re. 1/-, which was subsequently raised to Rs. 500/- towards payment of compensation. The Government, however, felt that as long time has elapsed since the earlier report under s. 5A was submitted by the Collector, a fresh enquiry should be made Accordingly the Additional Special Land Acquisition Officer issued a notice dated 1st August 1966 intimating to the respondents that if they so desired the may submit their further objections by or before 16th August 1966. Complying with this notice the respondents submitted further objections on 31st August 1966 and they were also given a personal hearing. After examining the report submitted by the enquiry officer the Government of Gujarat issued a notification under s. 6 on 10th October, 1967. The respondents questioned the validity and legality of this notification in the petition filed by them on 14th February, 1968.

Respondents questioned the validity of the impugned s. 6 notification on the only ground that it was issued more than 15 years after the date of s. 4 notification and thus it had been issued after an unreasonable delay and it was illegal and void. While this was the only contention which found favour with the High Court, in reaching this conclusion the High Court, after taking note of the fact that there was no express provision in the Act requiring that the notification under s. 6 must be issued within a reasonable time after issue of s. 4 notification, primarily relied upon the postulate that every statutory power must be exercised reasonably, a doctrine too finally entrenched in our jurisprudence to brook any refutation which would assist in raising the implication that s. 6 notification must follow within a reasonable time after issue of s. 4 notification. The Court also drew support from the scheme of ss. 4, 5A and 6 as well as the history of the legislation. On behalf of the appellants it was pointed out to the High Court that in view of the provisions contained in sub-s. (2) of s. 4 of the Land Acquisition (Amendment and Validation) Act, 1967 ('Amendment Act' for short), as well as the proviso to s. 6(1) also introduced by the same amendment Act the situation as has arisen in this case is not likely to arise and the apprehended mischief is not likely to be committed in future and, therefore, the Court should not go in search of the fetters on the power of the Government to issue s. 6 notification, in the absence of any express provision, by implication that statutory power must be exercised within a reasonable time. It was further submitted on their behalf that once the legislature has clearly permitted a thing to be done within the time specified in the statute it would be impermissible by a process of interpretation to reduce the statutory period by implying a further fetter on the power of the Government and that would be the effect if the contention on behalf of the respondents was accepted. In other words, as the legislature has now provided that in respect of a notification issued under s. 4 before the commencement of the Land Acquisition (Amendment and Validation) Ordinance, 1967, no declaration under s. 6 shall be made after the expiry of two years from the commencement of the aforesaid Ordinance, and futher that in case of section 4 notification issued after the commencement of the Ordinance a statutory limit of three years is fixed within which declaration under s. 6 can be made, the apprehended arbitrary exercise of power is thwarted and the Court should not further restrict or curtail the power of the Government to issue notification under s. 6 within the time prescribed by the statute.

The High Court was of the opinion that if the power to make a declaration under s. 6 is exercised after an unreasonable delay from the date on which notification under s. 4 is issued such exercies of power would be invalid and accordingly struck down the notificatio under s. 6. Hence these two

appeals.

A preliminary objection was raised by the learined counsel for the respondents in both the appeals contending that as the appellants in both the appels failed to seek within the prescribed time substitution of the heirs and legal representatives of respondent 5 who died on 8th March, 1970 during the pendency of the appeal in this Court, in the circumstances of the case these appeals would abate as a whole. Undoubtedly, respondent 5 who is described in the cause title of the Memos. of Appeals as "Ramesh Ramjibhai, Manager, Ramesh Restaurant, a joint hindu family business", died on 8th March 1970. what appears to have happened thereafter is that applications were made by the appellants under Order 22, Rule 10, Code of Civil Procedure, for bringing Shri Krishnakant Ramjibhai, Manager of Ramesh Restaurant, a joint hindu family business, on record in place of deceased respondent 5. According to the appellants the deceased respondent 5 had filed the original petition in his capacity as manager of joint hindu family business and on his death as the interest devolved upon the succeeding manager of the joint hindu family business, applications under order 22, rule 10, C.P.C. were made to bring the person on record on whom the interest devolved pending the appeal. Mr. D. V. Patel took serious exception to the procedure adopted by the appellants and there is some merit in this criticism. In fact, when Ramesh Ramjibhai who filed the initial petition in his capacity as karta of the undivided hindu family business died during the pendency of the appeal, proper applications should have been made by the appeal, proper applications should have been made by the appellants under O. 22, r. 4, to substitute heirs of Ramesh Ramjibhai who was respondent 5 in the appeals before this Court. In case of death of a party to a proceeding who is joined in his capacity as karta of an undivided hindu family, if the undivided hindu family continues to be in existence the succeeding karta can be substituted for the deceased karta of the family and that would be sufficient compliance with Order 22, r. 4. What appears to have been done is to make applications under O. 22, r. 10 and those applications appear to have been granted subject to just exceptions. The applications appear to have been made after the prescribed period of limitation, and in order to avoid seeking condonation of delay for setting aside abatement, O 22, r. 10 appears to have been invoked. Mr. Patel is right in saying that this was a device but in any event if proper applications were made under O. 22. r. 4 the gentleman who became the karta of the undivided hindu family after the death of the former karta could have been substituted on record for the deceased respondent 5. In any event, succeeding karta of the undivided hindu family having been brought on record though not strictly in accordance with law, we do not propese to give any importance to this technical objection and overrule the same.

In a decision inter partes, Valjibhai's case, (supra) this Court struck down the first section 6 notification issued on 14th August 1953 on the ground that the acquisition being for the benefit of a Corporation, though for a public purpose, was bad because no part of the compensation was to come out of the public revenue and the provisions of Part VII of the Act had not been complied with. It would appear that s. 4 notification was issued on 10th October 1952 and within less than one year, after completing the enquiry under s. 5A and the examination of the report by the appropriate Government, s. 6 notification was issued on 4th August 1953. By any yard- stick it could not have been said that there was delay, much less an unreasonable delay, in making the necessary declaration under s. 6 after the issue of the notification under s. 4. The chronology of events that followed in the wake of issuance of a notification under s. 6 dated 14th August 1953 would wholly

exonerate the Government of any charge of dithering or dilatoriness or inaction. These events be noticed now so as to appreciate the submission on behalf of the appellants that they cannot be accused of any inaction, deliberate dilatoriness or dithering.

Soon after the issue of the notification under s. 4 dated 10th October 1952 and even before the declaration was made under s. 6 as per notification dated 14th August 1953 the respondents filed Civil Suit No. 1262/53 challenging the notification under s. 4 and sought an injunction restraining the then State of Bombay from proceeding with the acquisition of the lands in possession of the respondents. An interim injunction was sought but the same was refused. Thereafter came the notification under s. 6 dated 14th August 1953. It appears that thereafter the respondents amended the plaint to add a relief for quashing and setting aside the notification under s. 6 also. It would thus appear that whatever was required to be done by the Government for completing the proceedings of acquisition was undertaken and finished within a period of less than one year from the date of the notification under s. 4. The suit filed by the respondents was dismissed by the trial court as per its judgment dated 28th January 1959. Both the notifications were held valid and they were not found to suffer from any infirmity as contended for and on behalf of the respondents. The respondents carried the matter in appeal to the District Court and this appeal was dismissed by the first appellate court as per its judgment dated 28th September 1959. The respondents preferred second appeal to the High Court but failed to carry conviction with the High Court, with the result that the appeal failed and was dismissed on 1st August 1960. The respondents did not rest content with the dismissal of their second appeal and applied for and obtained special leave of this Court under article 136 of the Constitution. The appeal of the respondents by special leave succeeded as per judgment rendered by this Court on 8th May 1963.

The question is whether there was any delay much less unreasonable delay on the part of the State Government in taking follow up action after issuing notification under s.

4. The State Government had actually taken the follow up action expeditiously within less than a year when on 14th August 1953, s. 6 notification was issued. Even before s. 6 notification was issued the respondents filed the suit and went on preferring appeals. They succeeded for the first time in this when this Court allowed their appeals on May 8, 1963. Till then the Government could not be accused of any inaction or delay in taking the follow up action. What was the Government expected to do during the time the respondents went on preferring successive appeals ? Was the Government expected, even though it succeeded in the trial court and first and second appellate courts to foresee in advance that at some stage by some court in the pyramid of appeals its notification under s. 6 would be found to be ineffective and forestall such a decision by issuing another s. 6 notification ex major cautela ? If the Government succeeded in three courts and was assured by three courts that both its notifications under ss. 4 and 6 were valid and effective, it is difficult to appreciate the observation of the High Court that when the Government issued the first s. 6 notification it was ineffective exercise of power under s. 6 and the Government wrongly went on contending that it was a valid exercise of power. This criticism is not well merited. There would have been some legitimacy in this criticism of the stand of the Government if the Government had lost in the first court and went on filing successive appeals even if each court went on holding the notification ineffective. The reverse is the position. The Government went on succeeding and the courts went on upholding the

notification. There was no alternative with the Government but to go on defending its action before the courts to which it was dragged by the respondents after their successive failures. In this background the question was posed by the High Court: Can the Government then contend, when it is found to be wrong by the highest court in the land, that the delay in the exercise of the power under s. 6 occasioned by its own wrong stand should be regarded as reasonable ? and answered by it by saying that if the Government had not persisted in wrongly asserting the validity of the first s. 6 notification and accepting its invalidity, had cancelled it, the delay in the effective exercise of the power under s. 6 could have been avoided. This answer is unfortunately not borne out by the events succeeding the issuance of the first s. 6 notification. Not only the Government stand was not found to be wrong but by three courts it was found to be correct. It is this Court in the last appeal found s. 6 notification invalid. Could the Government be expected to speculate in advance that ultimately it may fail to convince this Court though it had convinced three other courts and, therefore, right at the time of institution of the suit in the court, concede the contention of the respondents and cancel the first s. 6 notification and issue a second one ? There was no guarantee that the second one would not have been challenged and obviously there was no assurance that some defect may not be found by some court even in the second s. 6 notification. The Government cannot be put on the horns of a dilemma. Therefore, we find it difficult to agree with the High Court that having adopted a wrong stand and thus taken about 11 years the Government cannot now be permitted to urge that the delay so occasioned should not be regarded as unreasonable. In fact the Government had practically little or no option but to support the decisions of the Courts which were in its favour till this Court for the first time found some defect in its notification under s. 6. Any other view may lead to a starting result that every litigant before it can explain the delay on the ground of being led from court to court must foresee a possible error that the hierarchy of courts may at some stage notice and rectify its stand in advance. It would be nothing short of a speculative approach which may ill-suit any litigant and more so the Government.

The High Court was further of the opinion that even if there was some explanation for the delay from 14th August 1953 to 8th May 1963, there was no explanation for the delay in making the review application in the beginning of 1965 before the Supreme Court and that this period of one year and 9 months remains totally unexplained. In this context it may be advantageous to state that the respondents in the earlier round of litigation had challenged both the notifications under ss. 4 and 6 had lost before the first three courts. This Court while allowing the appeal by its judgment dated 8th May 1963 passed the final order as under:

"We, therefore, allow the appeals and decree the suits of the appellants with costs in all the Courts."

Literally implemented, the decretal portion would mean that both s. 4 and s. 6 notifications were struck down. Reading the body of the judgment it clearly transpires that this Court upheld the validity of the notification under s.

4. When this inconsistency between the judgment and the decree came to the notice of the Government, Review Petitions Nos. 11 and 12 of 1965 appear to have been filed in the year 1965, and these petitions were allowed by this Court as per its order dated 13th September 1965 by deleting the decretal portion of the judgment as extracted hereinabove and substituting it in the following words:

"and decree the suit for permanent injunction restraining the respondents from proceeding further with the land acquisition proceedings under the said notification issued under s. 6(1) of the Act with costs in all the courts".

The High Court was of the opinion that the Government took a long time of one year and 9 months in ascertaining this inconsistency between the decretal portion of the judgment and the main body of the judgment and there was delay in moving the review applications. In this connection a reference to the affidavit of Mr. D. K. Motwani, Secretary to the Gujarat State Road Transport Corporation for whose benefit the acquisition was made, as well as the affidavit of Shri S. R. Pardhan, Under Secretary to Government of Gujarat, would show that after the copy of the judgment was received and it was examined to ascertain what further steps were required to be taken to complete the process of acquisition consistent with the judgment of the Supreme Court, the error was discovered and then the learned advocate was instructed to file review applications. This delay of a year and few months in the context of the facts in this case cannot be said to be unreasonable.

The third stage where the High Court found the delay in taking the follow up action was after the grant of review application and before the impugned notification dated 10th October 1967 was issued. This Court allowed the review applications on 13th September 1965. Thereafter the Government directed a fresh enquiry under s. 5A. This was done in fairness to the respondents, though Mr. D. V. Patel learned counsel for the respondents was rather critical of this fairness of the Government inasmuch as he said that there was no necessity for a fresh enquiry. Earlier enquiry under s. 5A was in 1952. By this time nearly 15 years had elapsed since the enquiry. If the Government in the backdrop of these facts considered it fair and just to order a fresh enquiry to give the respondents an opportunity to file fresh objections, the Government cannot be accused of dithering or whiling away precious time on what was described as a futile exercise. This second enquiry under s. 5A was held after giving an opportunity as per notice dated August 1966, to file objections which in fact were filed on August 31, 1966, and then a notice dated 30th December 1966 was served upon the respondents calling upon them to appear for personal hearing on 12th January 1967. The enquiry was adjourned at the request of the respondents 9 times as set out in the affidavit of Shri S. R. Pardhan. The enquiry was over on 13th April 1967. During the course of personal hearing the respondents appeared through their advocates Sarvashri K. M. Vyas, A. L. Shah, V. R. Bhatt and N. D. Pandey. The last of the submissions appear to have been made on 13th April 1967. Thereafter the enquiry officer submitted his report and the Government took the prompt action of issuing the impugned notification on 10th October 1967. Even here the High Court found a further unexplained delay after 13th September 1965 till 10th October 1967 when the impugned notification was issued. The High Court possibly overlooked the affidavit of Shri S. R. Pradhan when it observed that there was no satisfactory answer to the question posed by it, in the affidavit filed on behalf of the respondents. With respect, it is not possible to subscribe to this view of the High Court in view of the facts clearly set out hereinabove. It, therefore, unmistakably transpires that in the facts and circumstances of this case there was no delay, though apparently there appears a time lag of nearly 15 years between s. 4 and s. 6 notifications because the events in the interregnum clearly made it impossible for the Government to issue a second s. 6 notification when it had already issued a first s. 6 notification within a period of less than one year from the date of the issue of the s. 4

notification and the validity of which was beyond reproach till May 6, 1963.

Assuming that the High Court was right in rejecting the explanation preferred by the Government for the delay in issuing the second s. 6 notification, would it still be fair to hold that there was an unreasonable delay in issuing the second s. 6 notification in view of the specific provision contained in sub-s. (2) of s. 4 of the 1967 Amendment Act which provides that notwithstanding anything contained in clause (b) of sub-s. (1), no declaration under s. 6 of the principal Act in respect of any land which has been notified before the commencement of the Land Acquisition (Amendment & Validation) Ordinance, 1967, under sub-s. (1) of s. 4 of the principal Act, shall be made after the expiry of two years from the commencement of the Ordinance. The Ordinance came into force on 20th January 1967. Simultaneously a proviso was added to sub-s. (1) of s. 6 in the following terms:

"Provided that no declaration in respect of any particular land covered by a notification under s. 4 sub-s. (1) published after the commencement of the Land Acquisition (Amendment & Validation) Ordinance, 1967, shall be made after the expiry of three years from the date of such publication".

A combined reading of the provisions contained in sub-s. (2) of s. 4 with the one contained in the proviso to sub-s. (1) of s. 6 introduced by the Amendment Act would clearly put an end to the unsatisfactory situation which troubled the High Court in this case. In view of the statutory provision noticed herein the Government would be precluded from making a declaration under s. 6 after the expiry of a period of three years from the date of the issue of a notification under s. 4 which may be issued after the Amendment Act came into force. And in respect of those s. 4 notifications which were issued perior to the commencement of the Ordinance hereinabove noted on 20th January 1967 any notification which is required to be issued under s. 6 must be made within a period of two years whereafter as a necessary corollary all s. 4 notifications issued prior to 20th January 1967 would stand exhausted and would not provide either a source or reservoir for issuing s. 6 notification. Consequently the mischief sought to be set at naught by the High Court by reading by necessary implication in the scheme of ss. 4, 5A and 6 the concept of exercise of statutory power within a reasonable time has been statutorily remedied. The apprehensions of the High Court that if not checkmated by implying that such statutory power must be exercised within a reasonable time to curb arbitrary exercise of power to the detriment of a citizen have been taken note of by the legislature and fully met. Absence of any decided case on the subject of which High Court took note could not permit an inference as has been done by the High Court that in the absence of a decided case the legislature would not remedy the possible mischief. Legislature often does take note of a possible abuse of power by the executive and proceed to nip it in the bud by appropriate legislation and that has been done in this case. There is now no more possibility of a gap of more than three years between s. 4 and s. 6 notifications because any declaration made after the expiry of a period of three years from the date on which s. 4 notification is issued would be invalid as being beyond the prescribed period.

These newly inserted provisions were brought to the notice of the High Court. Now, as pointed out earlier, the Ordinance came into force on 20th January 1967. The notification under s. 4 in this case was prior to the commencement of the Ordinance. Therefore, the provision contained in sub-s. (2) s. 4 of the 1967 Amendment Act would be directly attracted. The Government could, therefore make a

declaration within a period of two years from 20th January 1967. The Government has in fact issued the impugned notification under s. 6 on 10th October 1967, i.e. within the period prescribed by the statute.

The question then is: when a statute confers power and prescribes time within which it can be exercised, could it ever be said that even though the power is exercised within the statutory period yet the Court can examine the question of delay and record a finding that there was an unreasonable delay in exercise of the power and, therefore, the exercise of power is bad ? This approach would defeat the very purpose for prescribing a sort of a period of limitation on exercise of power. When a period is prescribed for exercise of power it manifests the legislative intention that the authority exercising the power within the prescribed time could not at least be accused of inaction or dithering and, therefore, such exercise of power could not be said to be bad or invalid on the only ground that there was unreasonable delay in the exercise of the power. The very prescription of time in heres a belief that the nature and quantum of power and the manner in which it is to be exercised would consume at least that much time which the statute prescribes as reasonable and, therefore, exercise of power within that time could not be negatived on the only ground of unreasonable delay. Therefore, in this case it is difficult to agree with the High Court that there was an unreasonable delay in exercise of power and hence the exercise was either bad or invalid.

The High Court by implication read a fetter on the power of the Government to issue s. 6 notification within a reasonable time after the issue of s. 4 notification after observing that there was no express provision that such power ought to be exercised within a reasonable time. In raising this implication the High Court took into account the postulate that every statutory power must be exercised reasonably and a reasonable exercise of power implies its exercise within a reasonable time. Coupled with it two other factors were taken into consideration such as the effect of issuing a s. 4 notification on the rights and obligations of the owner of the land whose land is proposed to be acquired; the right of the Government to unilaterally cancel s. 4 notification in the event of falling prices; history of legislation; and delayed issue of s. 6 notification would deny adequate compensation to the owner. But by the time the High Court examined this matter the legislature had already introduced a provision by which the power to issue s. 6 notification was to be exercised within the prescribed period of time. At that stage there hardly arose a question of a search of the fetter on the power of the Government ignoring to some extent the express statutory provision. Therefore, while appreciating the anxiety of the High Court we are of the opinion that once the legislature stepped in and prescribed a sort of period of limitation within which power to issue notification under s. 6 could be exercised it was not necessary to go in search of a further fetter on the power of the Government by raising the implication.

It thus appears to be satisfactorily established that the impugned s. 6 notification was issued within the prescribed period introduced by the 1967 Amendment Act and, therefore, could not be struck down on the only ground that the power to issue second s. 6 notification was exercised after an unreasonable and unexplained delay. This being the only infirmity found by the High Court to which we are not able to subscribe, it must be held that the second s. 6 notification dated 10th October 1967 is valid and legal.

Accordingly both these appeals succeed and are allowed and the decision of the High Court is set aside and Special Civil Application No. 729/68 filed by the respondents is dismissed but in the circumstances of the case, with no order as to costs.

S.R. Appeals allowed.