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unsatisfactory and the prosecution seeks to rely on the confession of a co-accused person, the presumption of innocence which is the basis of criminal jurisprudence assists the accused person and compels the Court to render the verdict that the charge is not proved against him, and so, he is entitled to the benefit of doubt. That is precisely what has happened in these appeals.

In the result, the appeals are allowed and the orders of conviction and sentence passed against the two appellants Haricharan Kurmi and Jogia Hajam are set aside and the accused are ordered to be acquitted.

Appeals allowed.

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SHYAM BEHARI AND OTHERS

v.

STATE OF MADHYA PRADESH AND OTHERS

(P. B. GAJENDRAGADKAR, C.J., K. N. WANCHOO, K. C. DAS GUPTA, J. C. SHAH AND N. RAJAGOPALA AYYANGAR JJ.)

Land Acquisition—Whole compensation to be paid by the company—No declaration that the land was needed for a company—Validity—Test—Land Acquisition Act, (1 of 1894), ss. 4, 6(1).

The Government issued a notification on December 3, 1960 under s. 6 of the Land Acquisition Act stating that the land described in the annexure to the notification was required for a public purpose, namely, for the construction of buildings for godowns and administrative office. The appellants challenged the validity of the notification in the High Court contending that the notification under s. 6 of the Act did not describe the land to be acquired with sufficient particularity and that although the notification mentioned that the land was required for a public purpose, in fact it was required for a company, which was entirely different from Government and was therefore invalid. Soon after the writ petition was filed, the State Government issued a fresh notification on April 19, 1961 mainly under s. 17(1) read with s. 17(4) of the Act. The notification stated that it was declared under s. 6 of the Act that the land was required for a public purpose, namely, "for the Premier Refractory Factory and work connected therewith." At the time of hearing of the writ petition in the High Court, it was urged on behalf of the appellants that both the notifications under s. 6 of the December 3, 1960 and April 19,

1961 were invalid because the acquisition was not for a public purpose as stated therein; in fact it was for a company which was entirely different from Government. The High Court dismissed the writ petition and held that the notifications under s. 6 must in substance and in law be deemed to be for acquisition of land for a company in the present case.

Held: Where the entire compensation is to be paid by a company, the notification under s. 6 must contain a declaration that the land is needed for a company. No notification under s. 6 can be made where the entire compensation is to be paid by a company declaring that the acquisition is for a public purpose, for, such a declaration requires that either wholly or in part, compensation must come out of public revenues or some fund controlled or managed by a local authority.

Pandit Jhandu Lal v. *State of Punjab*, [1961] 2 S.C.R. 459, followed.

In the present case, the whole compensation was to be paid by the company, therefore the notification under s. 6 had to declare that the land was needed for a company. There was nothing in either of the two notifications of December 3, 1960 and April 19, 1961 to show that the land was needed for a company, therefore they were invalid in view of the proviso to s. 6 (1) of the Act and all proceedings following on such notifications would be of no effect under the Act.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 177 of 1962.

Appeal by special leave from the judgment and order dated August 8, 1961, of the Madhya Pradesh High Court in Misc. Petition No. 81 of 1961.

Naunit Lal, for the appellant.

I. N. Shroff, for respondents Nos. 1—4.

Rajani Patel and *I. N. Shroff*, for the Intervener.

February 3, 1964. The Judgment of the Court was delivered by

Wanchoo J.

WANCHOO J.—This is an appeal by special leave against the judgment of the Madhya Pradesh High Court. The appellants filed a writ petition in the High Court challenging the validity of a notification issued under s. 6 of the Land Acquisition Act, No. I of 1894 (hereinafter referred to as the Act), Their case was that they were owners of certain lands in Chhaparwah. On July 8, 1960, a notification was issued under s. 4 of the Act to the effect that certain land in village Chhaparwah was required for a

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public purpose, namely, "for the construction of buildings for godowns and administrative office". Thereafter proceedings appear to have been taken under s. 5-A of the Act and an inquiry was made by the Collector. It may be mentioned that the acquisition proceedings were taken at the instance of the Premier Refractories of India Private Limited, Katni, which is a company. The Collector reported that the land was essential for the company and was needed for a public purpose and the objections of the land-owners has no substance. He therefore recommended that a declaration under s. 6 of the Act might be made. He also reported that a draft agreement to be executed between the company and the Government as required by s. 41 of the Act was being submitted along with a draft notification under s. 6. This report was made on October 17, 1960. On December 3, 1960, the notification under s. 6 was issued stating that the State Government was satisfied that the land described in the annexure to the notification was required for a public purpose, namely, for the construction of buildings for godowns and administrative office, and hence the notification was issued. It may be noticed that the notification under s. 6 did not say that the land was required for a company. Thereupon the appellants filed a writ petition in the High Court on March 20, 1960, and their main contentions were two, namely, (1) that the notification under s. 6 did not describe the land to be acquired with sufficient particularity and was therefore of no effect, and (2) that the notification mentioned that the land was required for a public purpose, though in actual fact the land was required for a company, which was entirely different from Government and therefore was invalid. Soon after the writ petition was filed, the State Government issued a fresh notification on April 19, 1961. This notification was mainly under s. 17 (1) read with s. 17(4) of the Act, which provides that in case of urgency, the State Government may direct the Collector before the award is made under certain circumstances to take possession of any waste or arable land needed for a public purpose or for a company. Curiously enough this notification stated that the State Government also directed that the provisions of s. 5-A would not apply, though as we have already stated, an inquiry under s. 5-A had already been made before the notification of December 3, 1960 was issued. The notification

further stated that it was declared under s. 6 of the Act that the land was required for a public purpose, namely, "for the Premier Refractory Factory and work connected therewith". It appears however that the real reason for issuing this notification in this form was to make good the lacuna which appeared in the notification of December 3, 1960 inasmuch as the property to be acquired was not specified with sufficient particularity in that notification. It may be noticed that this notification of April 19, 1961, treating it as a notification under s. 6 as well, nowhere specified that the land was required for a company; it only stated that the land was required for a public purpose, namely, for the Premier Refractory Factory and work connected therewith.

When the matter came to be argued before the High Court, the main point that was urged was that both the notifications under s. 6 of December 3, 1960 and April 19, 1961 were invalid, because the acquisition was not for a public purpose as stated therein; in fact the acquisition was for a company which was entirely different from Government. The High Court apparently held that the substance of the notifications showed that the land was being required for a public purpose as well as for the purpose of a company. The High Court was further of the view that insofar as the declaration spoke of the acquisition of land for a public purpose it was ineffective, as admittedly the compensation for the property was to be paid wholly by the company and no part of it was to be paid out of public funds. Even so, the High Court held that the declaration must be read in substance and in law as one for acquisition of land for a company, namely, the Premier Refractories of India Private Limited. In this view of the matter, the High Court dismissed the writ petition.

The only question that has been urged before us on behalf of the appellants is that the High Court was in error in reading the two notifications as in substance amounting to a declaration that the land was required for a company. Section 6(1) of the Act requires that whenever any land is needed for a public purpose or for a company, a declaration shall be made to that effect. Further the proviso to s. 6(1) provides that no such declaration shall be made unless the

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compensation to be awarded for such property is to be paid by a company, or wholly or partly out of public revenues or some fund controlled or managed by a local authority. This clearly contemplates two kinds of declarations. In the first place, a declaration may be made that land is required for a public purpose, in which case in view of the proviso, the compensation to be awarded for the property to be acquired must come wholly or partly out of public revenues or some fund controlled or managed by a local authority. No declaration under s. 6 for acquisition of land for a public purpose can be made unless either the whole or part of the compensation for the property to be acquired is to come out of public revenues or some fund controlled or managed by a local authority; see *Pandit Jhandu Lal* v. *State of Punjab*(1). In the second place, the declaration under s. 6 may be made that land is needed for a company in which case the entire compensation has to be paid by the company. It is clear therefore that where the entire compensation is to be paid by a company, the notification under s. 6 must contain a declaration that the land is needed for a company. No notification under s. 6 can be made where the entire compensation is to be paid by a company declaring that the acquisition is for a public purpose, for such a declaration requires that either wholly or in part, compensation must come out of public revenues or some fund controlled or managed by a local authority. In the present case it is not in dispute that no part of the compensation is to come out of public revenues or some fund controlled or managed by a local authority; on the other hand the whole compensation was to be paid by the company. Therefore the notification under s. 6 if it was to be valid in the circumstances of the present case had to declare that the land was needed for a company. No valid notification under s. 6 could be made in the circumstances of this case declaring that the land was needed for a public purpose, for no part of compensation was to be paid out of public revenues or some fund controlled or managed by a local authority. That is why the High Court felt that the notification under s. 6 declaring that the land was needed for a public purpose

(1) [1961] 2 S.C.R. 359.

would in the circumstances of this case be ineffective. But the High Court went on to hold that the notifications under s. 6 must in substance and in law be deemed to be for acquisition of land for a company in the present case. We are of opinion that this view of the High Court is incorrect. There is nothing in either of the two notifications dated December 3, 1960 and April 19, 1961 to show that the land was needed for a company. The notification of December 3, 1960 says in so many words that it was required for a public purpose, namely, for the construction of buildings for godowns and administrative office. No one reading this notification can possibly think that the land was needed for a company. Similarly the notification of April 19, 1961 says that the land was needed for a public purpose, namely, for the Premier Refractory Factory and work connected therewith. Now the company for which the land in this case was in fact required is the Premier Refractories of India Private Limted, Katni. There is nothing in the notification of April 19, 1961 to show that the land was needed for this company or any other company. All that the notification of April 19, 1961 says is that the land was needed for a public purpose, and the public purpose mentioned there was that the land was required for the Premier Refractory Factory and work connected therewith. The High Court thought that in substance this purpose showed that the land was required for the company mentioned above. But we do not see how, because the purpose specified was for the Premier Refractory Factory and work connected therewith, it can be said that the notification declared that the land was needed for the company. It is not impossible for the Government or for a local body to own such a factory and construct works in connection therewith. The mere fact that the public purpose mentioned was for the Premier Refractory Factory and work connected therewith, therefore, cannot mean that the land was needed for a company; as one reads the notification of April 19, 1961 one can only come to the conclusion that the land was needed for a public purpose, namely, for the construction of some work for a factory. There is no mention of any company anywhere in this notification and it cannot necessarily be concluded that the Premier Refractory Factory was a com-

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paLy, for a "factory" is something very different from a "company" and may belong to a company or to Government or to a local body or even to an individual. The mere fact that the public purpose declared in the notification was for the Premier Refractory Factory and work connected therewith cannot therefore lead to the inference that the acquisition was for a company. It follows that when the two notifications declared that the land was needed for a public purpose in a case where no part of the compensation was to come out of public revenues or some fund controlled or managed by a local authority, they were invalid in view of the proviso to s. 6(1) of the Act. All proceedings following on such notifications would be of no effect under the Act.

We therefore allow the appeal and set aside the order of the High Court and quash the notifications under s. 6 of the Act and restrain the respondents from taking any steps towards the acquisition of the land notified thereunder. As however the point on which the appellants have succeeded was not specifically taken in the writ petition, we direct the parties to bear their own costs throughout.

Appeal allowed.

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MRS. M. N. CLUBWALA AND ANR.

v.

FIDA HUSSAIN SAHEB AND ORS.

(K. SUBBA RAO AND J. R. MUDHOLKAR JJ.)

Licence or Lease—Provision requiring notice to vacate—If inconsistent with licence—Intention of parties—To be ascertained from Agreement—Inference from circumstances and conduct, if formal document absent—Exclusive possession if conclusive evidence of lease.

In disputes regarding extra fees in respect of meet-stalls in a private market owned by the appellants, the respondents—stall-holders filed a suit alleging that the relationship between them and the appellants was that of lessees and lessors; while according to the appellants, the respondents