enlarge the scope of the offence. We are of the considered opinion that the bamboos and bamboo sticks kept in a shop of retail seller do not fall within the description of the word "wood" as used in section 121 of the Act.

(5) It was then suggested by the learned counsel for the appellant that the bamboo sticks and coal kept at the shop of the respondent answered the description of dangerously inflammable material. We find no substance in this argument either. According to the Shorter Oxford English Dictionary, the word "inflammable" is defined as 'capable of being inflamed; susceptible of combustion; easily set on fire.' It is no doubt true that dry bamboos do catch fire easily but the statute does not prohibit the storage of merely inflammable material. The prohibition applies only to the "dangerously inflammable material". In our opinion, petrol, ether, alcohol and such other chemicals as are prone to go up in flames immediately when they catch fire, can only answer this description.

(6) On a careful consideration of the entire matter, we are of the view that the learned trial Court rightly came to the conclusion that the storing of bamboo sticks and small poles in a shop does not come within the mischief of section 121 of the Act. Consequently, this appeal fails and is dismissed.

SARKARIA, J.—I agree.

N.K.S.

LETTERS PATENT APPEAL

Before D. K. Mahajan and Prem Chand Pandit, JJ.

MADAN SINGH, ETC.,—*Appellants*

versus

THE STATE OF HARYANA AND ANOTHER,—*Respondents*

Latter Patent Appeal No. 99 of 1972

May, 16, 1972.

Land Acquisition Act (1 of 1894)—*Sections* 4, 5*A*, 6 *and* 48— *Requirements of section* 4(1)—*Whether mandatory*—*Public notice of the substance of notification under section* 4—*Whether must precede the notification under section* 6—*Section* 48—*Government's withdrawal from the acquisition of land*—*Whether a bar to restart acquisition proceedings qua the same land.*

Held, that the requirements of section 4(1) of the Land Acquisition Act 1894, are mandatory. The first requirement is that there has to be a public purpose for the acquisition of land by the Government and a notification to that effect has to be published in the official gazette. The second requirement is that after the notification is published, the Collector has to issue a public notice of the substance of that notification at convenient places in the locality where the land sought to be acquired is situate. Both these requirements are to be satisfied. In case the Government takes recourse to the provisions of section 17(4) of the Act, the provisions of section 5-A which enable the landowners to file their objections to the acquisition stand dispensed with and notification under section 6 can straightaway be issued. Notification under sections 4 and 6 can also be published simultaneously. The law does not make the prior publication of notification under sub-section (1) of section 4 a condition precedent to the publication of a notification under section 6(1) of the Act. Hence the fact that second requirement of section 4(1) of the Act is satisfied after the notification under section 6 is of no consequence. (Paras 11 and 12).

Held, that under section 48 of the Act, the right of the Government to withdraw from the acquisition of any land is recognised, provided it has not taken possession of the land or the case is not covered by the provisions of section 36 of the Act. On such withdrawal the Government under the provisions of sub-section (2) of section 48 is required to pay the amount of compensation due for the damages suffered by the owner in consequence of the notice or of any proceedings thereunder together with all costs reasonably incurred in the prosecution of the proceedings under the Act. This section does not put any bar on the power of the Government to restart acquisition proceedings with regard to the same land after having once withdrawn the acquisition proceedings. (Paras 9 and 13)

Letters Patent Appeal under clause X of the Letters Patent against the order dated 24th of January, 1972, passed by Hon'ble Mr. Justice Prem Chand Jain, in Civil Writ No. 4616 of 1971.

Anand Swarup. Senior Advocate, with R. S. Mittal, Advocate, *for the appellants.*

D. S. Lamba, Deputy Advocate-General, Haryana, with H. N. Mehtani, Assistant Advocate-General (Haryana), *for the respondent.*

JUDGMENT

MAHAJAN, J.—This order will dispose of Letters Patent Appeals Nos. 90 and 99 of 1972. Both these appeals are directed against the order of the learned Single Judge of this Court, dismissing two petitions filed by Madan Singh and others and Koora Ram and others against the notification issued by the Haryana Government under

section 4 and 6 of the Land Acquisition Act. These appeals have arisen out of two petitions filed under Articles 226 and 227 of the Constitution of India.

(2) The relevant facts are as follows:—

(3) On the 2nd of September, 1971 and on 7th of September, 1971, two notifications were issued by the Haryana Government under section 4, read with section 17(4) and section 6 of the Land Acquisition Act, 1894 (hereinafter referred to as the Act) respectively. Some of the land-owners challenged the validity of the notification in Civil Writ No. 3752 of 1971, filed under Articles 226 and 227 of the Constitution of India. This petition was heard by P. C. Jain, J. The learned Judge by his orders, dated 26th October, 1971 and 4th November, 1971, quashed the notification, dated 7th September, 1971 in its entirety and only a part of the notification, dated 2nd September, 1971, relating to order passed under section 17(4) of the Act. Faced with this situation, the Government proceeded to act under section 48(1) of the Act. The possession of the land had not been taken under the previous notification and thus fresh notifications were issued under sections 4 and 6. The notification under section 4 was issued on 4th of November, 1971. The notification under section 6 was issued on 5th of November, 1971. The public notice of the substance of the notification under section 4(1) was given on 6th November, 1971. On 7th November, 1971, possession of the land was taken by the Government. This is what led to the present petitions.

(4) A large number of matters were canvassed before the learned Single Judge. It is not necessary to deal with all of them because only two matters have been raised before us. We, therefore, confine ourselves to those two matters.

(5) The first contention that has been urged is that one of the requirements of section 4(1) of the Act was complied with after the notification under section 6 had been issued. The provisions of section 4(1) being mandatory full compliance with the same should have preceded the notification under section 6 of the Act. That not being so, the proceedings for acquisition of petitioners' land are void.

(6) The second contention advanced is that the withdrawal of the earlier notifications of 2nd September, 1971 and 7th September,

1971, under sections 4 and 6 respectively indicates that the Government had finally given up the idea of acquiring the land in question. That being so, the impugned notification could not be issued.

(7) The learned Single Judge rejected the first contention with the following observations:—

> "The question that now arises for consideration is whether in the present type of case where the State Government while issuing notification under section 4 has resorted to the provisions of sub-section (4) of section 17 and has notified that the provisions of section 5-A of the Act would not apply in regard to this acquistion, would it be essential to issue a public notice of the substance of notification in the locality before the issuance of a notification under section 6 of the Act. In my view, in such a case, issuance of notification under section 6 before the issuance of a public notice of the substance of notification under section 4 in the locality, would not render section 6 notfiication void and illegal. In *Smt. Somawanti and others* v. *The State of Punjab and others* (1), their Lordships of the Supreme Court have held that notification under section 4 and 6 can simultaneously be made as is evident from the following observations:—
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> 'It is the last and final contention of the petitioners in these petitions that the notifications under sections 4 and 6 cannot be made simultaneously and that since both the notifications were published in the Gazette of the same date, that is, August 25, 1961, the provisions of law have not been complied with. The argument is that the Act takes away from a person his inherent right to hold and enjoy that property and, therfore, the exercise of the statutory power by the State to take away such property for a public purpose by paying compensation must be subject to the meticulous observance of every provision of law entitling it to make the acquisition. It is pointed out that under sub-section (1) of section 4 the Government has first to notify that a particular land is likely to be needed

(1) A.I.R. 1963 S.C. 151.

for a public purpose'. Thereafter under section 5-A a person interested in the land has a right to object to the acquisition and the whole question has to be finally considered and decided by the Government after hearing such person. It is only thereafter that in a normal case the Government is entitled to make a notification under sub-section (1) of section 6 declaring that it is satisfied 'after considering the report, if any, made under section 5-A, sub-section (2), that the land is required for a public purpose. This is the sequence in which the notifications have to be made. The reason why the sequence has to be followed is to make it clear that the Government has applied its mind to all the relevant facts and then come to a decision or arrived at its satisfaction even in a case where the provisions of section 5-A need not be complied with. Undoubtedly the law requires that notification under sub-section (1) of section 6 must be made only after the Government is satisfied that particular land is required for a public purpose. Undoubtedly also where the Government has not directed under sub-section (4) of section 17 that the provisions of section 5-A need not be complied with the two notifications, that is, under sub-section (1) of section 4 and sub-section 1 of section 6 cannot be made simultaneously. But it seems to us that where there is an emergency by reason of which the State Government directs under sub-section (4) of section 17 of the Act that the provisions of section 5-A need not be complied with, the whole matter, that is, the actual requirement of the land for a public purpose must necessarily have been considered at the earliest stage itself that is when it was decided that compliance with the provisions of section 5-A be suspended with. It is, therefore, difficult to see why the two notifications cannot in such a case, be made simultaneously. A notification under sub-section (1) of section 4 is a condition precedent to the making of notification under sub-section (1) of section 6. If the Government, therefore, takes a decision to make such a notification and, thereafter, takes two further decision, that is, to dispense with compliance with the provisions of section 5-A and also to

declare that the land comprised in the notification is in fact needed for a public purpose, there is no departure from any provision of the law even though the two notifications are published on the same day. In the case before us the preliminary declaration under section 4(1) was made on August 18, 1961, and a declaration as to the satisfaction of the Government on August 19, 1961, though both of them were published in the Gazette of August 25, 1961. The preliminary declaration as well as the subsequent declaration are both required by law to be published in the official gazette. But the law does not make the prior publication of notification under sub-section (1) of section 4 a condition precedent to the publication of a notification under sub-section (1) of section 6. Where acquisition is being made after following the normal procedure the notification under the latter section will necessarliy have to be published subsequent to the notification under the former section because in such a case the observance of procedure under section 5-A is interposed between the two notifications. But where section 5-A is not in the way there is no irregularity in publishing those notifications on the same day.' If the two notifications can be made simultaneously as has been held by their Lordships of the Supreme Court, I fail to understand how the issuance of a public notice of the substance of a notification under section 4 subsequent to the publication of notification under section 6, would make the latter illegal. It is only in cases where normal procedure of acquisition has to be followed that the two requirements of sub-section (1) of section 4 have to be complied with before the issuance of a notification under section 6, but where the emergency provisions are resorted to, then, as earlier observed, subsequent publication of a notice in the locality would not make the notification under section 6 illegal. In this view of the matter, I have no hesitation in holding that the notification under section 6 is not illegal because it was issued prior to the issuance of a public notice of the substance of notification under section 4 in the locality."

(8) The second contention was rejected in the following terms:—

> "I find that there is considerable force in the contention of the learned Deputy Advocate-General, that the learned counsel for the petitioner should not be allowed to agitate the point as in this respect no plea has been taken in the petition."

(9) After making these observations, the learned Judge proceeded to decide the contention on the merits as well. The relevant observations of the learned Judge, after noticing section 48 are as follows:—

> "From the bare reading of this section, I find that the contention raised by the learned counsel for the petitioners has no merit. Under this section, the right of the Government to withdraw from the acquisition of any land is recognised, provided (i) it has not taken possession of the land or (ii), the case is not covered by the provisions of section 36 of the Act. Further on such withdrawal the Government under the provisions of sub-section (2) is required to pay the amount of compensation due for the damages suffered by the owner in consequence of the notice or of any proceedings thereunder together with all costs reasonably incurred in the prosecution of the proceedings under the Act. Thus, it is apparent that the bar put on the power of the Government to withdraw from the acquisition of any land is in two cases, viz. (i) where possession is taken or (ii) where the case is covered by the provisions of section 36. Mr. Anand Sarup, learned counsel contended that the language of sub-section (2) which provides paying of compensation and costs to the owner, clearly give an indication that under section 48 only those cases are covered in which there is complete withdrawal of the acquisition proceedings on the part of the Government, but I find that no such conclusion can be drawn from the language of sub-section (2) which, to my mind, has been enacted in order to safeguard the interest of the owners in cases where the Government chooses to withdraw from the acquisition, by providing the payment of compensation due for the damages suffered by the owner in consequence of the notice or of any proceedings together with all costs reasonably incurred in the proceedings under

the Act. Section 48 does not put any bar on the power of the Government to restart acquisition proceedings with regard to the same land after having once withdrawn the acquisition proceedings. In this conclusion of mine I am supported by a Division Bench decision of the Allahabad High Court in *Brij Nath Sarin* v. *Uttar Pradesh Government* (2) and a Single Bench decision of the Andhra High Court in v. *Harihara Prasad* v. *K. Jagannadan and another* (3). It may be observed that no other material has been placed on the record to show that the action of the Government in withdrawing the notification issued under section 4 was as a result of any abuse of power. Thus I hold that the action of the Government in withdrawing the notification under section 4 and issuing another notification under the same section on 4th November, 1971, is perfectly legal and no exception can be taken to it."

(10) These very contentions have been urged before us by Mr. Anand Swarup, learned counsel for the appellants. After hearing him at length, we are of the view that there is no merit whatever in any of these contentions.

(11) The requirement of section 4(1) undoubtedly is mandatory. The requirement is that there has to be a public purpose for the acquisition of land by the Government and a notification to that effect has to be published in the official gazette. The second requirement is that after the notification is published the Collector has to issue a public notice of the substance of that notification at convenient places in the said locality, i.e., the locality where the land sought to be acquired is situate. Both these requirements have been satisfied. But the contention is that the latter requirement was satisfied after a notification under section 6 had been issued and thus it is urged that there was no full compliance with the requirement of section 4(1) of the Act. In support of his contention, the learned counsel relies on section 5-A and section 6, read with section 4 of the Act. According to him, the scheme of all these three provisions is that first a notification under section 4 has to be issued, thereafter 30 days must elapse to enable the landowners to file their objections and then alone a notification under section 6 can issue. No exception can be taken to this contention so far as it goes provided the

(2) A.I.R. 1953 All. 182.
(3) A.I.R. 1955 Andhra 184.

Government had not decided to act under section 17(4) of the Act which is in the following terms:—

> "17(4) In the case of any land to which, in the opinion of the appropriate Government, the provisions of sub-section (1) or sub-section (2) are applicable, the appropriate Government may direct that the provisions of section 5-A shall not apply, and, if it does so direct, a declaration may be made under section 6 in respect of the land at any time after the publication of the notification under section 4, sub-section (1)".

Moment the Government resorted to section 17 (4) of the Act, the provisions of section 5A stood dispensed with. It is also pertinent to note that the contention of the learned counsel would run counter to the decisions of the Supreme Court in *Smt. Somawanti* v *State of Punjab*, (1) and *Khub Chand of* v. *State of Rajasthan*, (4). It has been laid down by the Supreme Court in categorical terms that the notifications under sections 4 and 6 can be simultaneously published. If this is correct, and undoubtedly it is correct because it has the seal of the Supreme Court, it necessarily follows that the compliance with the second requirement of section 4 could not take place before the notification under section 6 was issued. The relevant observations of the Supreme Court in *Khub Chand's* case (4)(supra) wherein their Lordships also considered their earlier decision, may be quoted with advantage.

> "The decision of this Court in *Smt. Somawanti* v. *State of Punjab* (1) (supra) is also beside the point. The argument advanced therein was that the notification under section 6 should succeed the notification under section 4 and that it could not be legally published in the same issue of the Gazette. Dealing with that argument, this Court observed:—
>
> 'In the case before us the preliminary declaration under section 4(1) was made on August 18, 1961, and a declaration as to the satisfaction of the Government on August 19, 1961, though both of them were published in the Gazette of August 25, 1961. The preliminary declaration as well as the subsequent declaration are

(4) A.I.R. 1967 S.C. 1074.

both required by law to be published in the official gazette. But the law does not make the prior publication of notification under sub-section (1) of section 4 a condition precedent to the publication of a notifica- under sub-section (1) of Section 6'.

On the said ground the contention was rejected. This decision also has no bearing on the point raised before us. Indeed, the following observation made by this Court in the course of the judgment, to some extent, goes against the contention of the respondent:

'A notification under sub-section (1) of section 4 is a condition precedent to the making of notification under sub-section (1) of section 6'.

In the present case, the High Court, as we have expressed earlier, rightly held that the provision for public notice was mandatory, but disallowed the objection on the ground that it was rather belated. We find it difficult to appreciate the said reasoning. This is not a case where a party, who submitted himself to the jurisdictoin of a tribunal, raised the plea of want of jurisdiction when the decision went against him, but this is a case where the appellants questioned the jurisdiction of the tribunal from the outset and refused to take part in the proceedings. Though the notification under section 4 was published in the Rajasthan Gazette on February 14, 1957. Award No. 1 was made on December 11, 1959 and Award No.2, on June 27, 1960. The appellants say that they came to know that the awards were made only on September 15, 1960 and they filed the petition on October 26, 1960. It cannot, therefore, be said that there was such an inordinate delay as to preclude the appellants from invoking the jurisdiction of the High Court under Article 226 of the Constitution."

(12) To accept the contention of Mr. Anand Swarup, and to hold otherwise would in effect nullify the decision of the Supreme Court. Mr. Anand Swarup has been unable to bring to our notice any decision where the view which he has propounded has been adopted.

On the contrary, the following decisions take the view that we have adopted, inrepelling Mr. Anand Swarup's contention:—

(1) *Khem Karan* v. *State of Uttar Pradesh,* (5) and

(2) *Maria Rosal De Rose,* v. *The State of Tamil Nadu,* (6).

It is not disputed, as already indicated, that the requirements of section 4(1) have been satisfied. The only dispute raised was that the second requirement of section 4(1) was satisfied after section 6 notification had been issued. This is of no consequence. For the reasons recorded above, we see no warrant either in principle or authority for the first contention advanced by Mr. Anand Swarup. We accordingly repel the same.

(13) So far as the second contention is concerned, the learned Single Judge upheld the preliminary objection of the learned Advocate for the State on the short ground that this contention had not been advanced in the petition. However, the learned Single Judge proceeded to deal with the contention on merits. We have already stated the reasons which prevailed with the learned Single Judge to reject that contention on merits. We entirely agree with those reasons and it is not necessary for us to repeat the same all over again.

(14) For the reasons recorded above, these appeals fail and are dismissed, with no order as to costs.

(15) I agree that these appeals be dismissed, but with no order as to costs.

B.S.G.

APPELLATE CIVIL

Before S. S. Sandhawalia and M. R. Sharma, JJ.

STATE OF PUNJAB.,—*Appellant.*

versus.

DES RAJ.,—*Respondent.*

Regular Second Appeal No. 415 of 1967

May 19, 1972.

Punjab Police Rules (1934)—*Rule* 16.38—*Railways Act (IX of* 1890)—*Section* 120—*Police constable in uniform while returning after delivering*

(5) A.I.R. 1966 All. 255.

(6) 1970(2) M.L.J. 471.