REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 3203 OF 2008
[Arising out of SLP (Civil) No. 568 of 2007]

Babulal Badriprasad Varma …Appellant

Versus

Surat Municipal Corporation & Ors. …Respondents

J U D G M E N T

S.B. SINHA, J :

1. Leave granted.

2. Interpretation and/ or application of the provisions of the Gujarat Town Planning and Urban Development Act, 1976 (for short "the Act") and the Rules framed thereunder known as the Gujarat Town Planning and Urban Development Rules, 1979 (for short "the Rules") is in question in this appeal which arises out of a judgment and order dated 27.12.2006 passed by a Division Bench of the High Court of Gujarat at Ahmedabad in

Letters Patent Appeal No. 1611 of 2006 arising out of a judgment and order dated 23.11.2006 passed by a learned Single Judge of the said Court in SCA No. 7092 of 2001.

3. Before embarking upon the issue involved in this appeal, we may notice the admitted fact of the matter.

The Government of Gujarat in exercise of its power conferred upon it under Section 65 of the Act made a scheme in respect of the town of Umra, Surat on 1.06.1999.

Plot Nos. 17/7 and 17/8 were owned by Respondent No. 4 herein. Appellant was a tenant under the said respondent in respect of Plot No. 17/8 admeasuring 1067 sq.m. He used to run a business of marble and stone therein. A road widening project was proposed in terms of the said scheme. Notices therefor were issued both to the appellant as also the respondent no.

4. Appellant objected thereto. He, however, did not pursue his case in regard to the proposal for widening of the road.

For the said public purpose, viz., widening of the road, 867 sq. m. of land was taken over leaving only 200 sq. m. of land. With a view to give effect to the provisions of the Act and the Rules framed thereunder, proceedings were initiated for allotment of the said land in terms of the Act. 20% of the land was taken over without payment of any compensation. In respect of the proceedings initiated for the purpose of re-allotment of the land, despite a public notice, the appellant did not file any objection. He did not take any part in the proceedings therefor. Respondent No. 4 was allotted a final plot bearing No. 157 and the said 200 sq. m. of land of plot No. 17/8 has merged in final plot No. 165 owned by the respondent No. 3.

The Scheme was notified in the year 1999. Respondent No. 1 herein which is the statutory agency in terms of the Act for the purpose of implementation of the Scheme issued a notice under Section 67 of the Act upon the respondent no. 4 on or about 15.01.2000. As he did not respond thereto, a notice under Section 68 of the Act was served on him on 31.03.2000 stating:

> "As per the said approved preliminary scheme the plot No. 157 is allotted to you. And, its pole demarcations were done by the town planning officer at site. The said Final Plot/ Original Plot is

> allotted in lieu of your No. 17/7, 17/8 paiki land. And, the said land is now vested in the Municipal Corporation from 1.7.1999, and is of the ownership of the Municipal Corporation. Thereafter the notice below section 67 for the change in occupation was issued on 15.1.2000 to you. In spite of this you have not handed over the possession. Therefore, as per the Gujarat Town Planning and Urban Development Rules, 1979 rule 33 the undersigned in exercise of powers conferred below section 68(1) and 8(2) of the Bombay Provincial Municipalities Act and below the section 68 notice under the Gujarat Town Planning and Urban Development Act this is to inform you that as shown in the sketch on the reverse the premises marked should be vacated within 7 days from receipt of the notice and had over the possession to the Surat Municipal Corporation. If you fail to do so then on completion of the stipulated time limit as per the Rule 33 of the Gujarat Town Planning and Urban Development Rules, 1979 the said land and the occupation on the same will be summarily evicted and your occupation will be removed and if you obstruct/ interfere on it after taking away the possession you trespass then as provided under Rule 33 of the Gujarat Town Planning and Urban Development Rules, 1979 the action as per the section 188 of the Indian Penal Code will be initiated against you before the Criminal Court, pleased take note of the same."

5. The validity and/ or legality of the said notice was questioned by the appellant by filing a writ petition in the High Court of Gujarat inter alia contending that the purported final allotment of plot No. 165 in favour of

the respondent no. 3 and allotment of final plot No. 157 in favour of the respondent no. 4 were made without issuing any notice as envisaged under Sections 52 and 53 of the Act.

In the said writ petition, it was prayed:

> "8. On the facts and circumstances mentioned herein above, the Petitioner prays to your Lordships that:
> (A) Be pleased to issue writ of Mandamus or writ in the nature of Mandamus or appropriate writ, order or direction, quashing and setting aside the impugned action of acquiring and demolishing the structures available on the land in question, i.e., Original Plot No. 17/A – R.S. No. 17/P, situated at Umra, Surat."

6. A learned Single Judge of the High Court dismissed the said writ petition inter alia opining that the interest of landlord and tenant being common and in absence of any inter se dispute between them even if any portion of the land which remained in possession of the tenant was included in the Scheme, the proper remedy would be to claim compensation to that extent, holding:

"18. It appears that in the said decision, the Apex Court while considering the scheme on the touch-stone of the mandatory procedure to be followed by the authority under the Bombay Town Planning Rules, has given directions to provide alternative accommodation based on the earlier decision in case of Jaswantsingh Mathurasingh and upheld the scheme. Such is not the issue in the present case nor there is any complaint by the tenant that any special notice was not served or that the mandatory procedure for finalization of the scheme is not followed. Further, it appears that if the interest of the landlord and of the tenant is common and in absence of any inter se dispute between the landlord and tenant, even if any portion of the land which is in possession of the tenant is included in the scheme, the proper remedy for the tenant would be to claim for compensation to that extent and if such compensation is not received by him, he may resort to proper remedy available for recovery of the compensation to the extent of the area in his occupation. At least on ground that the tenant is in occupation, it would not be a case for interference with the scheme which is sanctioned and made a part of the statute. Suffice it to say that the tenant will be at liberty to resort to appropriate proceedings against the landlord for the inter se rights and also for entitlement of the compensation. But if the area of original plot no. 17/8 is included in the final scheme and in exchange of the original plot held by Keshav Gramini of 17/8 and 17/7, the final plot is already allotted and as observed earlier it was even otherwise in the ownership of the original holder and it is only on account of inter se dispute the other persons are lawfully occupying the land, the tenant cannot insist that his landlord must be allotted the land of final plot no. 157 simultaneously, when he is to be evicted or

> deprived of the portion of the land of original plot no. 17/8. Therefore, in my view considering the peculiar facts and circumstances of the present case, the decision of the Apex Court in case of Mansukhlal (supra) cannot be made applicable to the present case."

7. A Division Bench of the High Court dismissed an intra-court appeal preferred thereagainst.

8. Mr. U.U. Lalit, learned senior counsel appearing on behalf of the appellant, in support of this appeal, inter alia would submit:

(i) The provisions of Sections 52 and 81 being imperative in character, no acquisition of land is permissible without service of any notice upon the persons interested which would include a tenant in occupation and carrying on business thereon.

(ii) A tenant having regard to the provisions of the Transfer of Property Act or otherwise having an interest in the property cannot be deprived therefrom without following the procedure established by law and without initiation of any proceedings for acquisition of land.

(iii) The tenant's interest being distinct and separate could not have been held to be merged with the interest of the landlord, either for the purpose of allotment of a final plot or otherwise in favour of the landlord.

(iv) Appellant having a right over the remaining 200 sq. m. of the land of original plot No. 17/8 should be allowed to continue thereupon and final allotment made in favour of the respondent no. 3 to that extent should be cancelled.

Mr. Lalit in support of his contention strongly relied upon a decision of this Court in Mansukhlal Jadavji Darji and Others v. Ahmedabad Municipal Corporation and Others [(1992) 1 SCC 384] and Jaswantsingh Mathurasingh and Another v. Ahmedabad Municipal Corporation and Others [1992 Supp (1) SCC 5].

9. Mr. Prashant G. Desai, learned counsel appearing on behalf of the respondent no. 1, on the other hand, would submit:

(i) Public notices having been issued in terms of the Rule 26 of the Rules, an objection which would nullify the Scheme cannot be entertained at this stage.

(ii) Respondent No. 1 Corporation merely being interested in the implementation of the Scheme is entitled to obtain vacant possession from him so as to enable it to deliver it to the respondent No. 3 in whose favour plot No. 165 has been finally allotted.

(iii) The Scheme in terms of Sub-section (3) of Section 65 of the Act having become a part of the Act, validity thereof cannot be questioned at this stage as modification of the Scheme, if any, will have to undergo the entire process once over again which is not contemplated under the Act.

10. The Act was enacted to consolidate and amend the law relating to the making and execution of development plans and town planning schemes in the State of Gujarat.

11. It is not necessary for us to delve deep into the statutory scheme. Suffice it to say that Chapter IV of the Act deals with control of development and use of land included in the development plans. Chapter V of the Act provides for town planning schemes.

Section 40 of the Act empowers the appropriate authority to make one or more schemes. A declaration of intention to make a scheme is to be notified whereafter a draft scheme may be published. Section 45 provides for reconstitution of the plots, sub-section (2) whereof inter alia enables allotment of a final plot from an original plot by transfer of any adjoining lands. Section 52 contemplates issuance of a notice in a prescribed manner and in the prescribed form.

12. Section 52 of the Act provides for the contents of preliminary and final scheme. It inter alia provides for giving of a notice by the Town Planning Officer as follows:

> "(1) In a preliminary scheme, the Town Planning Officer shall,-
>
> (i) after giving notice in the prescribed manner and in the prescribed form to the persons affected by the scheme, define and demarcate the areas allotted to, or reserved for, any public purpose, or for a purpose of the appropriate authority and the final plots;
>
> (ii) after giving notice as aforesaid, determine in a case in which a final plot is to be allotted to persons in ownership in common, the shares of such persons;"

Further, Sub-section (3) of Section 65, Sections 67 and 68 of the Act read as under:

> "65 - Power of Government to sanction or refuse to sanction the scheme and effect of sanction -
>
> (3) On and After the date fixed in such notification, the preliminary scheme or the final scheme, as the case may be, shall have effect as if it were enacted in this Act.
>
> 67 - Effect of preliminary scheme
>
> On the day on which the preliminary scheme comes into force-
>
> (a) all lands required by the appropriate authority shall, unless it is otherwise determined in such scheme, vest absolutely in the appropriate authority free from all encumbrances;
>
> (b) all rights in the original plots which have been re-constituted into final plots shall determine and the final plots shall become subject to the rights settled by the Town Planning Officer.
>
> 68 - Power of appropriate authority to evict summarily
>
> On and after the date on which a preliminary scheme comes into force, any person continuing to occupy any land which he is not entitled to occupy under the preliminary scheme shall, in accordance with the prescribed procedure, be summarily evicted by the appropriate authority."

13. Rules 26(1), 26(3) and 33 of the Rules read as under:

> "26. Procedure to be followed by Town Planning Officer under section 51 and under sub-section (1) of section 52 – (1) For the purpose of preparing the preliminary scheme and final scheme the Town Planning Officer shall give notice in Form H of the date on which he will commence his duties and shall state the time, as provided in Rule 37 within which the owner of any property or right which is injuriously affected by the making of a Town Planning Scheme shall be entitled under section 82 to make a claim before him. Such notice shall be published in the Official Gazette and in one or more Gujarati newspapers circulated within the area of the appropriate authority and shall be pasted in prominent places at or near the areas comprised in the scheme and at the office of the Town Planning Officer.
>
> (3) The Town Planning Officer shall, before proceeding to deal with the matters specified in section 52, publish a notice in Form H in the Official Gazette and in one or more Gujarati newspapers circulating within the area of the appropriate authority. Such notice shall specify the matters which are proposed to be decided by the Town Planning Officer and State that all persons who are interested in the plots or are affected by any of the matters specified in the notice shall communicate in writing their objections to the Town Planning Officer within a period of twenty days from the publication of notice in the Official Gazette. Such notice shall also be posted at the officer of the Town Planning Officer and of the appropriate authority and the substance of such notice shall be pasted at convenient places in the said locality.

> 33. Procedure for eviction under Section 68. –
> (1) For eviction under section 68, the appropriate authority shall follow the following procedure, viz.:
> (a) The appropriate authority shall in the first instance serve a notice upon a person to be evicted requiring him, within such reasonable time as may be specified in the notice, to vacate the land.
> (b) If the person to be evicted fails to comply with the requirement of the notice, the appropriate authority shall depute any Officer or Servant to remove him.
> (c) If the person to be evicted resists or obstructs the officer or Servant deputed under clause (b) or if he re-occupies the land after eviction, the appropriate authority shall prosecute him under section 188 of the Indian Penal Code."

14. Before embarking upon the rival contentions, we may also notice that the provisions of the Bombay Town Planning Rules, 1955 (for short "the Bombay Rules") are in pari materia with 'the Rules'.

Rule 21 of the Bombay Rules provides for the Procedure to be followed by the Town Planning Officer. It makes it obligatory on the part of the officer to give notice of the date on which he will commence his duties and shall state therein the time, within which the owner of any property or rights which is injuriously affected by the making of the town

planning scheme shall be advertised in one or more newspapers published in the regional language and circulating within the jurisdiction of the local authority and shall be posted in prominent places at or near the area comprised in the scheme and at the office of the Town Planning Officer. Sub-Rule (3) of Rule 21 of the Bombay Rules provides for serving of a Special notice of at least three clear days' upon the person interested in any plot or in any particular area comprised in the scheme, before the Town Planning Officer proceeds to deal in detail with the portion of the scheme relating thereto. Sub-Rule (4) makes it imperative upon the Town Planning Officer to "give all persons affected by any particular (sic) of the scheme sufficient opportunity of stating their views and shall not give any decision till he has duly considered their representations, if any". Sub-Rule (5) provides for recording a brief minute setting out the points at issue and the necessary particulars if during the proceedings, it appears to the Town Planning Officer that there are conflicting claims or any difference of opinion with regard to any part of the scheme.

15. Rules 26 of the Rules do not contemplate service of individual notice. It prescribes service of notice in Form H. A copy of the notice in the said Form is kept at the office of the Town Planning Officer during office hours. Any person affected by the proposal of the Town Planning Scheme is

entitled to inspect the Scheme in the office where arrangements for explaining the scheme proposals are made. It furthermore provides that any person entitled to claim damages in terms of Section 82 of the Act should communicate the details of his claim to the Town Planning Officer. Section 81 of the Act enables the State to transfer of right from original to final plot or extinction of such right.

A Town Planning Scheme, therefore, envisages calling for objection from the persons concerned for three purposes:

(i) in regard to draft scheme;

(ii) lodging of any claim for payment of compensation;

(iii) participation in the matter of allotment of final plots.

16. We may, however, notice that Rule 21 of the Bombay Rules provides for notice under Sub-rule (3) thereof and a reasonable opportunity of hearing under Sub-Rule (5) thereof. Sub-rule (3) of Rule 21 of the Bombay Rules provides for issuance of a special notice upon the person interested in any plot or in any particular plot comprised in the Scheme.

17. We may also take notice of the decision of this Court in Mansukhlal Jadavji Darji (supra) wherein this Court opined that Sub-rule (3) of Rule 21 of the Bombay Rules was mandatory in nature, subject, of course, to the condition that on the crucial date, viz., when the Town Planning Scheme is notified in the official gazette, he, whether an owner or tenant or sub-tenant, must be in possession of the property.

18. In Jaswantsingh Mathurasingh (supra), it was reiterated that a tenant or a sub-tenant is a person interested and is entitled to notice. In that context, it was held:

> "8. The question is whether the tenant or a sub-tenant is a person interested and is entitled to notice. It is obvious that under Section 105 of Transfer of Property Act, a lease creates right or an interest in enjoyment of the demised property and a tenant or a sub-tenant is entitled to remain in possession of the demised property until the lease is duly terminated and eviction takes place in accordance with law. Therefore, a tenant or a sub-tenant in possession of a tenement in the Town Planning Scheme is a person interested within the meaning of Rules 21(3) and (4) of the Rules. But he must be in possession of the property on the crucial date i.e. when the Town Planning Scheme is notified in the official Gazette. Every owner or tenant or a sub-tenant, in possession on that date alone shall be entitled to a notice and opportunity."

19. Rule 21(3), however, of the Bombay Rules has been amended in tune with Rule 26 of the Rules. Amended rules are in pari materia with Rule 26 of the Rules.

20. Appellant was a tenant in respect of plot No. 17/8. Plot No. 17/7 was not a plot contiguous thereto. They were separated not only by a road but also by various other plots.

21. It is also not in dispute that the appellant filed an objection in regard to the draft scheme but did not eventually pursue the same. The draft scheme was approved. 867 sq. m. of land had been acquired for public purpose out of the said plot No. 17/8. While the proceedings relating to allotment of final plot were in progress, he even did not file any objection thereto. If he intended to claim any interest in a portion of plot No. 17/8 either for the purpose of obtaining compensation for acquisition of a part of the land or to continue to have possession over 200 sq. m. of land in plot No. 17/8, it was obligatory on his part to take part in the proceedings. Whether irrespective of Rule 26 of the Rules which prescribes for issuance of a general public notice, any special notice upon the appellant was required to be served by the State or by the authority, in our opinion, cannot

be gone into by us in these proceedings for the first time. Validity of Rule 26 of the Rules had never been questioned. It had also not been contended that the said Rule is ultra vires Section 52 of the Act.

22. A person interested in continuing to keep possession over a property and/ or a part of the amount of compensation must lay his claim before the appropriate authority at the appropriate stage. If in absence of any such claim filed by the appellant, the authorities have proceeded to finalise allotment of final plot in favour of the respondent Nos. 3 and 4 herein, it is too late in the day to contend that the entire scheme should be re-opened.

We would consider the effect of Sub-section (3) of Section 65 of the Act a little later, but, we may at this juncture notice that the respondent No. 3 in whose favour plot No. 165 has been allotted which includes 200 sq. m. of land purported to be in possession of the appellant had nothing to do with the dispute between the appellant and his landlord the respondent no. 4. Respondent No. 4 was in possession of a contiguous plot. Respondent No. 4 was owner of both plot Nos. 17/7 and 17/8. He was, therefore, in his own right entitled to final allotment of some plot.

23. We would, however, assume that it was obligatory on the part of the State to serve a special notice upon the appellant. The question, however, would be : what would be the consequence of non-compliance thereof vis-à-vis the conduct of the appellant himself?

24. A person may waive a right either expressly or by necessary implication. He may in a given case disentitle himself from obtaining an equitable relief particularly when he allows a thing to come to an irreversible situation.

25. Different statutes provide for different manner of service of notice. The Bangalore Development Authority Act, 1976 provides that every person whose name appears in the assessment list or land revenue records shall be served with notice. [See Sureshchandra C. Mehta v. State of Karnataka and Others 1994 Supp (2) SCC 511]

In West Bengal Housing Board etc. v. Brijendra Prasad Gupta and Others, etc. [AIR 1997 SC 2745], it was opined that the authority is not required to make a roaming enquiry as to who is the person entitled to notice.

26. We have referred to the said decisions only to show that the requirements in regard to the manner of service of notice varies from statute to statute and there exists a difference between the Bombay Rules and the Rules.

27. We are, however, not unmindful of the fact that a statute of town planning ex facie is not a statute for acquisition of a property. An owner of a plot is asked to part therewith only for providing for better facilities of which he would also be a beneficiary. Every step taken by the State does not involve application of the doctrine of eminent domain.

In this case, the appellant did not oppose the draft scheme. It accepted that the State had a right to do so. Existence of a public purpose and increase in the valuation of the property was admitted. There exists a distinction in the action of the planning authority as regards vesting of a property in it and one so as to enable it to create a third party interest vis-à-vis for the purpose of re-allotment thereof. In the former case, the vesting of the land may be held to be an act of acquisition, whereas in the latter, it would be distribution of certain benefits having regard to the purpose sought to be achieved by a statute involving town planning. It was on that

legal principle, this Court in State of Gujarat v. Shantilal Mangaldas & Ors. [1969 (3) SCR 341], opined that when a development is made, the owner of the property gets much more than what would have he got, if the same remained undeveloped in the process as by reason thereof he gets the benefit of living in a developed town having good town planning.

28. Section 67 of the Act provides that all lands required by the appropriate authority shall, unless it is otherwise determined in such scheme, vest absolutely in the appropriate authority free from all encumbrances with effect from the date on which the preliminary scheme comes into force. What would be the quantum of payment of compensation therefor is also provided in Section 82 of the Act. It is in the aforementioned situation, a claim is to be made before the authority whenever a notice in Form H is published. If a claim is not filed, the person, who is said to be injuriously affected, does so at its own peril. Had such a claim been filed, the authority before making final allotment could have considered the competing claims wherefor a large number of factors were required to be taken into consideration, viz., the location of the land, the area of the land, the nature of right, etc.

29. When a statute makes an elaborate provision as regards the formalities required to be undergone at every stage by the local authority, the State Government and other authorities concerned in preparing and making the final Town Planning Scheme, the same should be considered to be exhaustively. [See Maneklal Chhotalal & Ors. v. M.G. Makwana & Ors. [(1967) 3 SCR 65]

In Maneklal Chhotalal (supra), it was held:

> **"49.** Therefore, having due regard to the substantive and procedural aspects, we are satisfied that the Act imposes only reasonable restrictions, in which case, it is saved under Article 19(5) of the Constitution. The considerations referred to above will also show that the grievance of the petitioners that Article 14 is violated, is also not acceptable."

[See also Bhikhubhai Vithlabhai Patel & Ors. v. State of Gujarat & Anr. 2008 (4) SCALE 278]

30. We are, however, not oblivious that in a given situation, a question may also arise as to whether the restrictions imposed by a statute are reasonable or not.

31. It is not a case where the State by its acts of omissions and commissions was unjustly enriching itself. It was a dispute between two private parties as regards the right to obtain final allotment; the principles underlying the same are not in dispute. What is in dispute is the distribution of quantum thereof between two competing claimants, viz., landlord and tenant. We do not mean to say that under no circumstances the appellant was entitled to allotment of a portion of the property or mandatory compensation in lieu thereof from the landlord. But, we intend to emphasise that he has lost his right to enforce the same in a public law forum. He has no enforceable claim against the State at this juncture. He may pursue his claim only against the respondent No. 4 in an appropriate proceedings wherein for certain purposes the State or the authorities may also be impleaded as a party. Even if he had a claim he would be deemed to have waived the same for the reasons stated hereinafter.

32. It is not in dispute that:

(a) Appellant although filed an objection with regard to the draft scheme, did not choose to pursue it.

(b) He did not file objections for re-allotment and did not participate in the proceedings following acquisition instituted by the authorities under the Act.

In view of the above, the issue is whether it was open to him to assert his purported right to special notice in respect of the final allotment in the instant case given the fact that he did not pursue his objections to the draft scheme and subsequently did not object/participate during the proceedings for re-allotment.

33. It has been noticed by us hereinbefore that under Rule 26 of the Rules applicable in the instant case, as distinguished from the Bombay Rules (wherein special notice is required), no special notice is mandatorily required to be served. Assuming, however, that it was obligatory for the State to issue notice to the appellant, the question is whether the principle of waiver precludes him from claiming equitable relief in this case due to his earlier conduct which allowed the entire process of acquisition and allotment to become final. We are of the opinion that even if he had any such right, he waived the same.

In Halsbury's Laws of England, Volume 16(2), 4th edition, para 907, it is stated:

> "The expression 'waiver' may, in law, bear different meanings. The primary meaning has been said to be the abandonment of a right in such a way that the other party is entitled to plead the abandonment by way of confession and avoidance if the right is thereafter asserted, and is either express or implied from conduct. It may arise from a party making an election, for example whether or not to exercise a contractual right… Waiver may also be by virtue of equitable or promissory estoppel; unlike waiver arising from an election, no question arises of any particular knowledge on the part of the person making the representation, and the estoppel may be suspensory only… Where the waiver is not express, it may be implied from conduct which is inconsistent with the continuance of the right, without the need for writing or for consideration moving from, or detriment to, the party who benefits by the waiver, but mere acts of indulgence will not amount to waiver; nor may a party benefit from the waiver unless he has altered his position in reliance on it"

As early as 1957, the concept of waiver was articulated in a case involving the late assertion of a claim regarding improper constitution of a Tribunal in Manak Lal v. Dr. Prem Chand [AIR 1957 SC 425] in the following terms:

> "It is true that waiver cannot always and in every case be inferred merely from the failure of the party to take the objection. Waiver can be inferred only if and after it is shown that the party knew

> about the relevant facts and was aware of his right to take the objection. As Sir Johan Romilly M. R. has observed in Vyvyan v. Vyvyan [(1861) 30 Beav. 65, 74; 54 E.R. 813, 817] "waiver or acquiescence, like election, **presupposes that the person to be bound is fully cognizant of his rights, and, that being so, he neglects to enforce them**, or chooses one benefit instead of another, either, but not both, of which he might claim".

In The Director of Inspection of Income Tax (Investigation), New Delhi and Another v. Pooran Mal & Sons and Another [(1975) 4 SCC 568] the issue was regarding waiver of benefits under a statute of limitation. It was stated:

> **"13.** We may in this connection refer to the decision in *Wilson* v. *McIntosh*. In that case an applicant to bring lands under the Real Property Act filed his case in court under Section 21, more than three months after a caveat had been lodged, and thereafter obtained an order that the caveator should file her case, which she accordingly did. It was held that he had thereby waived his right to have the caveat set aside as lapsed under Section 23. The Privy Council held that the limitation of time contained in Section 23 was introduced for the benefit of the applicant, to enable him to obtain a speedy determination of his right to have the land brought under the provisions of the Act and that it was competent for the applicant to waive the limit of the three months, and that he did waive it by stating a case and applying for and obtaining an order upon the appellant to state her case both, which steps assumed and proceeded on the assumption of the continued existence of the

> caveat. They referred with approval to the decision in *Phillips* v. *Martin* where the Chief Justice said:
>
> "Here there is abundant evidence of waiver, and it is quite clear that a man may by his conduct waive a provision of an Act of Parliament intended for his benefit. The caveator was not brought into Court in any way until the caveat had lapsed. And now the applicant, after all these proceedings have been taken by him, after doubtless much expense has been incurred on the part of the caveator, and after lying by and hoping to get a judgment of the Court in his favour, asks the Court to do that which but for some reasons known to himself he might have asked the Court to do before any other step in the proceedings had been taken. I think he is altogether too late. It is to my mind a clear principle of equity, and I have no doubt there are abundant authorities on the point, that equity will interfere to prevent the machinery of an Act of Parliament being used by a person to defeat equities which he has himself raised, and to get rid of a waiver created by his own acts."

The legal principle emerging from these decisions is also stated in Craies on Statute Law (6th Edn.) at page 369 as follows:

> "As a general rule, the conditions imposed by statutes which authorise legal proceedings are treated as being indispensable to giving the court jurisdiction. <u>But if it appears that the statutory conditions were inserted by the legislature simply for the security or benefit of the parties to the action themselves, and that no public interests are involved, such conditions will not be considered as indispensable, and either party may waive them without affecting the jurisdiction of the court</u>**."**

[emphasis supplied]

Applying the above principles to the present case, it must be held that the benefit of notice provided under the Act and Rules being for the benefit of the Appellant in which no public interests are involved, he has waived the same.

34. Significantly, a similar conclusion was reached in the case of Krishna Bahadur v. Purna Theatre [(2004) 8 SCC 229], though the principle was stated far more precisely, in the following terms:

> **"9.** The principle of waiver although is akin to the principle of estoppel; the difference between the two, however, is that whereas estoppel is not a cause of action; it is a rule of evidence; waiver is contractual and may constitute a cause of action; it is an agreement between the parties and a party fully knowing of its rights has agreed not to assert a right for a consideration.
>
> **10.** A right can be waived by the party for whose benefit certain requirements or conditions had been provided for by a statute subject to the condition that no public interest is involved therein. Whenever waiver is pleaded it is for the party pleading the same to show that an agreement waiving the right in consideration of some compromise came into being. Statutory right, however, may also be waived by his conduct."
>
> [Emphasis supplied]

[See also Bank of India v. O.P. Swarnakar (2003) 2 SCC 721]

35. In Ramdev Food Products Pvt. Ltd. v. Arvindbhai Rambhai Patel and Ors. [2006 (8) SCALE 631], this Court observed:

> "The matter may be considered from another angle. If the first respondent has expressly waived his right on the trade mark registered in the name of the appellant-Company, could he claim the said right indirectly? The answer to the said question must be rendered in the negative. It is well-settled that what cannot be done directly cannot be done indirectly. The term 'Waiver' has been described in the following words: "Waiver is the abandonment of a right in such a way that the other party is entitled to plead the abandonment by way of confession and avoidance if the right is thereafter asserted, and is either express or implied from conduct. A person who is entitled to rely on a stipulation, existing for his benefit alone, in a contract or of a statutory provision may waive it, and allow the contract or transaction to proceed as though the stipulation or provision did not exist. Waiver of this kind depends upon consent, and the fact that the other party has acted upon it is sufficient consideration It seems that, in general, where one party has, by his words or conduct, made to the other a promise or assurance which was intended to affect the legal relations between them and to be acted on accordingly, then, once the other party has taken him at his word and acted on it, so as to alter his position, the party who gave the promise or assurance cannot afterwards be allowed to revert to the previous legal relationship as if no such promise or assurance had been made by him, but he must accept their legal relations subject to the qualification which he has himself so introduced, even though it is not supported in

> point of law by any consideration. [See 16 Halsbury's Laws (4th edn) para 1471] "

In this view of the matter, it may safely be stated that the appellant, through his conduct, has waived his right to an equitable remedy in the instant case. Such conduct precludes and operates as estoppel against him with respect to asserting a right over a portion of the acquired land in a situation where the scheme in question has attained finality following as a result of the appellant's inaction.

36. Mr. Lalit submits that his client is ready and willing to pay some reasonable amount to the respondent No. 3 in whose favour plot No. 165 has been finally allotted. Issuance of any such direction, in our opinion, is legally impermissible.

37. We, therefore, are of the opinion that in this case, no relief can be granted to the appellant. He may, however, take recourse to such remedy which is available with him in law including one by filing a suit or making a representation before the State.

38. For the reasons aforementioned, the appeal is dismissed. No costs.

…….J.
[S.B. Sinha]

..……J.
[V.S. Sirpurkar]

New Delhi;
May 02, 2008