
(2015) 07 OHC CK 0013

In the Orissa High Court

Case No : Writ Petition (C) Nos. 7163, 10431, 10432, 10433 and 10436 of 2012

Kalia Hati and Others

APPELLANT

Vs

State of Odisha and Others

RESPONDENT

Date of Decision : 13-07-2015

Acts Referred:

Land Acquisition Act, 1894 — Section 12(2), 17(4), 3(e), 3(f), 3(f)(iv)

Citation : (2016) 1 ILR (Ori) 5

Hon'ble Judges : P. Mohanty, J; Biswajit Mohanty, J

Bench : Division Bench

Advocate : J.P. Pattnaik, Addl. Government Advocate, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Biswajit Mohanty, J.—The above writ petitions have been filed by the villagers of Mahada, Sargunamunda, Pudapadar and Ghantabahal falling under Titilagarh Tahasil in the district of Bolangir mainly with the following prayers:

"To admit the writ applications, issue Rule Nisi calling upon the opp. parties to show cause as to why the Lands acquisition proceeding and notifications U/s. 4(1) and declaration U/s. 6(1) and notice under Section 12(2) of the L.A. Act and all consequential decisions shall not be declared illegal and inoperative and shall not be quashed;

If the opp. parties failed to show cause or show insufficient cause, the said Rule be made absolute and consequently the Land acquisition proceeding for construction of Sahara India Power Corporation at Ghantabahal, Mahada, Sargunamunda, Luthurbandh, Pudapadar, Jamjore and Serko etc. be declared as illegal, arbitrary and inoperative in the eyes of law and the notification U/s. 4(a), U/s. 6(1) and notice under Sec. 12(2) of the L.A. Act and all consequential decisions be quashed;"

It may be noted here that W.P. (C) No. 10431 of 2012, W.P. (C) No. 10432 of

2012, W.P. (C) No. 10433 of 2012 and W.P.(C) No. 10436 of 2012 were filed by villagers of Sargunamunda, Mahada, Pudapadar and Ghantabahali respectively. W.P. (C) No. 7163 of 2012 was filed by villagers belonging to the above four villages only.

2. At the outset, it is made clear that learned counsel for the parties agreed and submitted that since the issues involved in all these writ petitions are one and same, W.P. (C) No. 10432 of 2012 should be taken as lead case along with other writ applications. Learned counsel for the petitioners filed memos on 26.03.2015 to the effect that written note of submission filed on behalf of the petitioners on 19.02.2015 in W.P. (C) No. 10432 of 2012 be treated as final and the same be adopted for rest four writ applications. Though initially all the writ petitions were filed as public interest litigations, however, later on, vide order dated 19.06.2012 passed in W.P. (C) No. 10431 of 2012, it was made clear that interim orders passed earlier have to be confined to the petitioners of these five cases only. Thus, for all purposes the present writ petitions have become private interest litigations between petitioners and the opp. parties. It is important to note here that vide orders dated 12.11.2014, the names of petitioner Nos. 11 and 13 have been deleted from W.P. (C) No. 10432 of 2012, name of petitioner No. 7 has been deleted from W.P. (C) No. 7163 of 2012, names of petitioner Nos. 8 and 19 have been deleted from W.P. (C) No. 10436 of 2012, names of petitioner Nos. 5, 10, 12, 18, 19 and 20 have been deleted from W.P. (C) No. 10433 of 2012 and names of petitioner Nos. 14 and 15 have been deleted from W.P. (C) No. 10431 of 2012.

3. Now to a survey of facts. On 16.10.2008, there was a meeting of the State Level Single Window Clearance Authority (for short "the SLSWCA") which was chaired by the Chief Secretary, Odisha. In the said meeting, amongst other proposals, proposal of opp. party No. 5, i.e., M/s. Sahara India Power Corporation Ltd. for setting up a 1320 MW Coal based Mega Power Plant at village Turla and Ratanakhandi under Tusra Tahasil of Bolangir district with an investment of Rs. 5604.00 crores was considered. The SLSWCA recommended the proposal of opp. party No. 5 to High Level Clearance Authority (for short the "HLCA") subject to a number of conditions. Some time thereafter, on 7.2.2009, a Memorandum of Understanding (Annexure-A/1 series filed in W.P. (C) No. 10432 of 2012) was signed between opp. party No. 5 and Governor of Odisha represented by the Commissioner-cum-Secretary, Energy Department. In the said MOU, it was indicated inter alia that:

- (i) infirm power would be made available to the State at variable cost.
- (ii) a nominated agency(s) authorized by Government would have the right to purchase 14% of power sent out from the Thermal Power Plant(s) at variable cost if Coal Blocks are allocated to the IPP within the State, otherwise, it would provide 12% power at variable cost. Tariff for such power would be determined by the Odisha Electricity Regulatory Commissions.

(iii) Opp. party No. 5 would have the right to sell the balance power from the Thermal Power Plant(s) to any party outside or inside the State of Odisha subject to applicable laws and regulations, for which opp. party No. 5 might enter into contractual arrangement(s) with such buyer(s), the terms of which would be mutually agreed between opp. party No. 5 and such buyer (s).

(iv) In case the Government or its nominated agency was unable to honour the terms of the Power Purchase Agreement (PPA), opp. party No. 5 would have the right to sell such power to any other party in or outside the State of Odisha.

(v) The Government agreed to acquire the required land and handover the required land free from all encumbrances to opp. party No. 5 through Odisha Industrial Infrastructure Development Corporation (IDCO) for the Project and allied facilities.

(vi) Opp. party No. 5 agreed to pay the cost of the land to IDCO in case the land was acquired for the purpose and to the revenue authorities in case the land was Government land along with the rehabilitation costs and other related charges. In case the Project was abandoned for some reason or other, all required rehabilitation cost would be borne by the opp. party No. 5 in the same manner as if the project had been implemented. All incidental charges paid by the opp. party No. 5 for such land acquisition paid to various authorities would stand forfeited.

(vii) As the opp. party No. 5 was a responsible corporate house with a high involvement in employee's welfare and social development, the Government, therefore, understood that opp. party No. 5 would bring this philosophy to the Power Plant being set up in Bolangir District to ensure the well being of this District in particular and the people of Odisha in general. In the matter of employment, preference would be given to the people of Odisha as well as local persons subject to the need of the project and their possessing the necessary qualifications and opp. party No. 5 agreed to comply with policies of the State Government in this regard.

Employment to local people would be provided by the opp. party No. 5 in the following ratios for the project affected people and people of Odisha;

4. On 4.8.2009 (Annexure F/6 filed in W.P. (C) No. 10432 of 2012), the Government of Odisha in Industries Department in exercise of power conferred by Section 2(h), 2(i) and 14 of the Odisha Industrial Infrastructure Development Corporation Act, 1980, for short "1980 Act" and in pursuance of Revenue Department Notification No. 44308/R dated 20.8.1981 declared some industrial zones as industrial estates/industrial areas for purposes of development/establishment of industries by Odisha Industrial Infrastructure Development Corporation (IDCO) in the State with immediate effect. The said notification covers Titilagarh Industrial Estate, falling within Titilagarh Tahasil under Bolangir district. On 16.12.2009 (Annexure-C/2 series filed in W.P.(C) No. 10432 of 2012), the Chairman-cum-Managing Director of Industrial Promotion and

Investment Corporation of Odisha Ltd., a Government of Odisha undertaking wrote to opp. party No. 2 that 950 acres of land be acquired near village Ghantabahali, Mahada, Bhalegaon in Titilagarh Tahasil in the district of Bolangir in favour of opp. party No. 5 for setting up 1320 M.W. Power Plant. It was also made clear that the usual terms and conditions of IDCO in addition to the terms and conditions stipulated in MOU be mentioned while executing the land lease agreement. On 14.1.2010, the Odisha Electricity Regulatory Commission made the following observations:--

"xxx xxx xxx xxx

The gap between availability and the State's Energy requirement has narrowed down from 2003-2004 to 2007-2008 and in the middle of 2007-2008, the availability was equal to the demand. However in the end part of 2008-2009, the availability has fallen below the State's requirement. The situation has worsened further because of the returning of power to the States which had helped Orissa to tide over the power crisis during last summer. The only options left with the existing power distribution authorities are to restrict drawl of distribution licenses or buy power through the route of trade which not only implies enhanced financial burden on the State exchequer but is also limited in supply. Distribution authorities have therefore, in utter compulsion, no other recourse that go for load shedding which implies long duration power cuts in various parts of the State affecting function of everyday life. xxx xxx xxx"

5. On 27.1.2010 vide Annexure-A/2 series filed in W.P.(C) No. 10432 of 2012, the HLCA approved the proposal of opp. party No. 5 to change the location of the proposed 1320 MW Coal based Power Plant to village Ghantabaheli, Mahada and Bhalegaon under Titilagarh Tahasil in the district of Bolangir, subject to fulfillment of certain conditions as stipulated therein. Accordingly, on 4.3.2010 (Annexure-E/2 series filed in W.P. (C) No. 10432 of 2012), IDCO requested opp. party No. 3 that a patch of private land measuring Ac.197.87 decimals in village Mahada under Titilagarh Tahasil in the district of Bolangir has been identified as suitable for Industrial Development and the said parcel of land be acquired for industrial purpose. The land schedule along with detail particulars were enclosed in the said letter dated 4.3.2010 for reference. Similar such letters were issued by the IDCO requesting opp. party No. 3 for acquisition of land for industrial purposes in village Ghantabaheli, Luthurbandh, Serka, Jamjor, Podapadar and Sargunamunda. It is important to note here that present five writ petitions are concerned with only four villages, namely, Sargunamunda, Mahada, Pudapadar and Ghantabaheli. On 9.4.2010 (Annexure-1 series filed in W.P. (C) No. 10432 of 2012) Supplemental deed of Memorandum of Understanding was signed between the Governor of Odisha represented by the Commissioner-cum-Secretary, Energy Department and opp. party No. 5. It was made clear therein that whereas the aforesaid parties had entered into a deed of Memorandum of Understanding on 7.2.2009 to set up a Thermal Power Plant of 1320 MW at Turla, Bolangir in the State of Odisha, whereas the proposal of opp. party No. 5 to change the location

of the proposed 1320 MW Coal based plant to some villages of Titilargh Tahasil has been approved by HLCA on 27.1.2010 and whereas Water Resources Department have given clearance for proposed Thermal Power Plant in the new location; now, therefore, it was agreed that in the principal MOU dated 7.2.2009 for the words "Turla, Bolangir" wherever they occurred, the words "Ghantabaheli, Mahada and Bhalegaon under Titilargh Tahasil in Bolangir district" should be deemed to have been substituted. On 11.5.2010 vide Annexure-D/2 of W.P. (C) No. 10432 of 2012, Government granted administrative approval for acquisition of land measuring Acs. 808.450 decimals in Titilargh Tahasil with certain conditions. Out of the four villages with which we are concerned, these villages covered an area of Acs. 581.230 decimals.

6. Accordingly, notification dated 7.6.2010 under Section 4(1) of the Land Acquisition Act, 1894, for short "1894 Act" was published in the Orissa Gazette Extraordinary on 11.6.2010 with regard to village Mahada. On 16.06.2010 public notice of substance of notification was made. All these have been indicated in the affidavit dated 18.4.2015 filed on behalf of opp. parties 3 and 4. This notification with regard to village Mahada was published in Oriya newspapers - "Sambad Kalika" and "Agni Sikha" on 21.06.2010. Pursuant to such notifications while 22 persons filed their objections, no objection was submitted by the petitioners. On 25.11.2010, declaration under Section 6(1) dated 20.11.2010 was published in official gazettee. The said declaration was also published in Oriya newspapers - "Sambad" and "Dharitri" on 20.01.2011. Public notice of substance of such declaration was made on 30.11.2010. All these have been indicated in the affidavit dated 18.4.2015 filed on behalf of opp. parties 3 and 4. Similarly, with regard to villages-Sargunamunda, Pudapadar and Ghantabaheli, the required notifications under Section 4(1) of the "1894 Act" were also published in the Orissa Gazettee, in Oriya newspapers and public notices of substance of notification were also made. All these have been indicated in the affidavits dated 18.4.2015 filed in W.P. (C) No. 10431 of 2012, W.P. (C) No. 10433 of 2012 and W.P. (C) No. 10436 of 2012. Pursuant to such notifications with regard to villages-Sargunamunda, Pudapadar and Ghantabaheli, 25 objections, 30 objections and 45 objections were received respectively. The petitioners of W.P. (C) No. 10431 of 2012 belonging to village, Sargunamunda; petitioners of W.P. (C) No. 10433 of 2012 belonging to village, Pudapadar and petitioners of W.P. (C) No. 10436 of 2012 belonging to village Ghantabaheli and petitioners of W.P. (C) No. 7163 of 2012 belonging to villages-Sargunamunda, Mahada, Pudapadar and Ghantabaheli never filed any objections. Similarly, with regard to villages-Sargunamunda, Pudapadar and Ghantabaheli, declarations under Section 6(1) of "1894 Act" were published in Orissa Gazettee, also published in Oriya newspapers and public notices of substance of declaration were made. All these have been indicated in the affidavits dated 18.4.2015 filed in W.P. (C) No. 10431 of 2012, W.P. (C) No. 10433 of 2012 and W.P. (C) No. 10436 of 2012. On 22.11.2010, the opp. party No. 5 deposited Rs. 6,38,16,922/- with IDCO. On 4.12.2010 vide Annexure-H/2 filed in W.P. (C) No. 10432 of 2012, IDCO deposited Rs. 3,60,14,363/- with opp.

party No. 4 towards cost of acquisition of land in five numbers of villages, namely, Luthurbandha, Jamjor, Saragunamunda, Pudapadar and Serko under Titilagarh Tahasil in the district of Bolangir. On 29.4.2011, the petitioner Nos. 9 and 17 of W.P. (C) No. 10432 of 2012 along with others belonging to villages-Sargunamunda, Pudapada and Ghantabaheli filed W.P. (C) No. 11768 of 2011 making a number of prayers. Awards were made on 01.06.2011, 16.06.2011, 16.06.2011 and on 29.6.2011 in respect of villages-Pudapadar, Mahada, Ghantabaheli and Sargunamunda respectively. In respect of above villages, possession of the lands in question were taken by the Government between July, 2011 to March, 2012. On 13.7.2011, W.P. (C) No. 11768 of 2011 was disposed of by granting liberty to the petitioners therein to approach the opp. parties 1, 2 and 4 of that writ application by filing representations and it was made clear therein that if such representations were submitted, the said representations should be considered and disposed of within six weeks from the date of its submission. Vide order dated 17.9.2011 (Annexure-4 filed in W.P. (C) No. 10432 of 2012), State Pollution Control Board, Odisha intimated Harekrushna Chattar petitioner No. 1 in the aforesaid writ petition indicating disposal of his representation with certain comments. On 26.9.2011 (Annexure-H/2 filed in W.P. (C) No. 10432 of 2012), IDCO deposited Rs. 2,60,89,162/- with opp. party No. 4 towards the cost of acquisition of land in respect of the villages, i.e., Ghantabaheli and Mahada. On 17.04.2012, W.P. (C) No. 7163 of 2012 was filed and on 16.05.2012, this Court directed maintenance of status quo with regard to possession of petitioners therein. On 02.06.2012 (Annexure-3 filed in W.P. (C) No. 10432 of 2012) notice under Section 12(2) of "1894 Act" was published in Odiya daily "the Sambad". It was indicated therein that those who would not receive the compensation amount that amount would be deposited in the District Treasury and the land would be handed over to IDCO authorities. In such background, on 6.6.2012, W.P. (C) Nos. 10431 of 2012, 10432 of 2012 and 10433 of 2012 were filed. On 07.06.2012, W.P. (C) No. 10436 of 2012 was filed. On 8.6.2012, the opp. Party Nos. 4 and 7 of W.P. (C) No. 10432 of 2012 intimated opp. Party No. 2 to take over possession of acquired land to the tune of Ac.608.61 decimals covering villages-Pudapadar, Mahada, Ghantabaheli, Sargunamunda, Luthurbandh and Jamjore, which were already in their possession. So far as villages, Sargunamunda, Mahada, Pudapadar and Ghantabaheli are concerned, the acquired land came to the tune of Ac.482.24 decimals. The letter dated 8.6.2012 filed along with affidavit dated 18.4.2015 by opp. party Nos. 3 and 4 clearly indicated that land of petitioners of W.P. (C) No. 7163 of 2012 have been excluded. On 11.6.2012 status quo orders with regard to possession were passed in W.P. (C) No. 10431 of 2012, W.P. (C) No. 10432 of 2012, W.P. (C) No. 10433 of 2012 and W.P. (C) No. 10436 of 2012. Later on vide order dated 19.6.2012 passed in W.P.(C) No. 10431 of 2012, it was made clear that the interim orders passed earlier were confined to petitioners only in all five writ petitions. As indicated earlier, this modified order is reflected in the order sheet of W.P.(C) No. 10431 of 2012. On 2.7.2012, opp. Party Nos. 4 and 7 of W.P. (C) No. 10432 of 2012 handed over possession of Ac.392.20 decimals of

land of six villages including villages-Sargunamunda, Mahada, Pudapadar and Ghantabaheli to IDCO. On 31.7.2012 by way of registered agreements between the State and IDCO, Government transferred Ac.392.20 decimals of land to IDCO with certain terms and conditions. On 28.8.2012, IDCO executed lease deed in favour of opp. party No. 5 and handed over possession of land to the tune of Ac.392.20 decimals for 90 years with a number of conditions. Accordingly, on 4.9.2012, possession was handed over to opp. party No. 5. All these things are contained in documents filed along with an affidavit on 18.4.2015 on behalf of opp. Party Nos. 4 and 5. It is an affidavit covering W.P. (C) Nos. 10431,10432,10433,10436 of 2012.

7. Heard Mr. S.K. Mishra, learned counsel for the petitioners, Mr. Mukherjee, learned counsel for opp. party No. 2, Mr. Jayanta Das and Mr. S.S. Das, learned Senior Counsel on behalf of opp. parties 5 and 6 and Mr. J.P. Pattanaik, learned Addl. Government Advocate.

8. Perused the written submission dated 19.02.2015 filed by Mr. Mishra, learned counsel for the petitioners, written submissions dated 13.02.2015 filed by Mr. Mukherjee, learned counsel for the opp. party No. 2 and written submissions dated 13.8.2014 and 16.02.2015 filed by Mr. Jayanta Das and Mr. S.S. Das, learned Senior Counsel for opp. parties 5 and 6. It may be noted that as per five memos filed by the learned counsel for the petitioners on 26.03.2015, it was made clear that the written note of submission filed on behalf of the petitioners on 19.02.2015 in W.P. (C) No. 10432 of 2012 be treated as final and the same was being adopted for the rest four writ petitions. After the judgment was reserved on 11.2.2015, the matter was listed under the heading "To be mentioned" and on 5.5.2015, the following question was referred to Full Bench:

"Whether in the background of the entire Scheme of OIIDCO Act, 1980 would it be proper to say that as per the said Act, IDCO can cause acquisition of land only for the purpose of establishing industrial estate/industrial area and for no other purpose?"

Judgment by the Full Bench was pronounced on 30.06.2015 holding that sub-section (i) of Section 14 of the "1980 Act" was independent and was couched in broad terms. The same cannot be in any manner whittled down by the language of sub-section (ii) of Section 14 of "1980 Act". It also made it clear that function and general powers of the Corporation as enumerated in Sections 14 and 15 of "1980 Act" could not be cabined, cribbed and confined by language used in Section 14(ii).

9. Now to submissions made by learned counsel for the parties. Mr. Mishra, learned counsel for the petitioners submitted that on account of non-publication of Section 4(1) notification in two newspapers having wide circulation in locality, the petitioners could not file their objections in terms of Section 5-A of the "1894 Act" and thereby the petitioners had been deprived of their legitimate right to object to the acquisition proceeding. He also submitted that the declaration

under Section 6(1) of "1894 Act" had not also been published in two newspapers having wide circulation in locality. Accordingly, the proceeding has been vitiated.

Secondly, he contended that the sequence of events indicated that the entire process was geared up to acquire land for opp. party No. 5. In such background the authorities ought to have taken steps under Part-VII of the "1894 Act" read with Land Acquisition (Companies) Rules, 1963. Since the authorities had not adhered to the procedure prescribed under Part-VII of the "1894 Act" dealing with acquisition of land for Companies and the procedure prescribed by Land Acquisition (Companies) Rules, 1963, the entire proceeding was vitiated and the prayer of the petitioners should be allowed. Mr. Mishra reiterated that the acquisition process was initiated by the State Government to acquire the land for opp. party No. 5 and subsequently IDCO was brought into the picture in an attempt to regularize the acquisition. The acquisition of land by the State Government for opp. party No. 5-Company to set up its power plant was not tenable as the same had been done in violation of the mandates of Part-VII of the "1894 Act". He further argued that the acquisition could not be said to be on the basis of the proposal made by the IDCO, as much prior to the alleged proposal, the State Government had already entered into an agreement to acquire the land for opp. party No. 5. With regard to notification dated 4.8.2009, (Annexure-F/6), Mr. Mishra submitted that the same had no relevance as the area can be notified as industrial area only after acquisition is made and not before acquisition and by the time the notification was published, the area in question had not been acquired by the Government. The opp. parties have made an attempt to bring the acquisition within the purview of Part-II of the "1894 Act" though the prerequisites for such acquisition under "1980 Act" was lacking in the instant case.

Thirdly, he submitted that the claim that the acquisition was made for public purpose was not tenable, as the acquisition was made for a private company. Referring to definition of "Public Purpose" occurring at Section 3(f) of "1894 Act", Mr. Mishra emphatically submitted that the said definition specifically excluded acquisition of land for companies. Since in the instant case the land had been acquired for company like opp. party No. 5, who has paid for the land, it could not be said that the same had been acquired for public purpose.

10. On the other hand, Mr. Pattnaik, learned Addl. Government Advocate submitted that the writ petition was highly belated and on that count the writ petition deserved to be dismissed. With regard to four villages in question, he submitted that awards were made in June, 2011 and the present writ petitions were filed on 17.04.2012, 6.6.2012 and 7.6.2012. Further except the petitioners, who were now pursuing their cases, rest of the villagers of four villages to which the petitioners belong have taken their compensation amounts.

Secondly, Mr. Pattnaik submitted that there were no documents to show that petitioners of the five writ petitions were the recorded owners of the lands in question covered by notification under Section 4(1) of the "1894 Act" relating to

four villages. Accordingly, the petitioners have no locus standi to challenge the notifications.

Thirdly, he submitted that though from villages-Pudapadar, Sargunamunda, Ghantabaheli and Mahada 30,25,45 and 22 numbers of objections were received respectively under Section 5-A of the "1894 Act", the petitioners never filed any objection to that effect. Non-filing of objections by above noted petitioners clearly revealed that they were not in any way affected by the land acquisition process rather they had acquiesced to the acquisition process. On this count, he further submitted that the contention of petitioners that since Section 4(1) notification was not published in two regional newspapers and thus, the petitioners could not file their objections, had no legs to stand. He submitted that with regard to village Mahada, besides the Gazettee Notification, the notification dated 7.6.2010 under Section 4(1) of "1894 Act" was published on 21.6.2010 in Oriya newspapers "Sambad Kalika" and "Agni Sikha" circulating in the locality. Further, he submitted that the substance of the notification was publicly notified at convenient place of village Mahada on 16.06.2010. Similarly, with regard to village Sargunamunda besides the Gazettee Notification, the notification dated 7.7.2010 under Section 4(1) of "1894 Act" was published on 31.07.2010 in Oriya newspapers "Odisha Bhaskar" and "Kalinga Bharati" circulating in the locality. Further, the substance of notification was publicly notified at convenient place of village-Sargunamunda on 16.07.2010. With regard to village-Pudapadar, Mr. Pattnaik, learned Addl. Government Advocate submitted that besides Gazettee notification, the notification dated 7.7.2010 under Section 4(1) of "1894 Act" was published on 31.07.2010 in Oriya Newspapers-"The Sambad Kalika" and "The Janamukha" circulating in the locality. Further, the substance of notification was publicly notified in the locality on 21.07.2010. With regard to village Ghantabaheli, besides Gazettee notification, Mr. Pattnaik, learned Addl. Government Advocate submitted that the notification dated 7.6.2010 under Section 4(1) of "1894 Act" was published on 21.06.2010 in Oriya newspapers "The Bharat Darshan" and "The Pragatantra", circulating in the locality. Further, the substance of notification was published in the locality on 16.06.2010. Accordingly, Mr. Pattnaik reiterated that the very fact that 22 villagers belonging to village Mahada, 25 villagers belonging to village Sargunamunda, 30 villagers belonging to village-Pudapadar and 45 villagers belonging to village Ghantabaheli submitted their objections to Section 4(1) would show that there was wide publication of Section 4(1) notification. Since despite public notice the above noted petitioners did not object to the said notifications, now, therefore, they should be estopped from challenging notification under Section 4(1) of "1894 Act" with regard to villages- Mahada, Sargunamunda, Pudapadar and Ghantabaheli. In this context, he submitted that law was well settled that no writ was maintainable at the behest of the persons who never cared to submit their objections pursuant to notification under Section 4(1) of "1894 Act". He relied on a decision reported in Delhi Administration Vs. Gurdip Singh Uban and Others, AIR 2000 SC 3737 : (2000) 9 JT 245 : (2000) 5 SCALE 651 : (2000) 7 SCC 296 :

(2000) 2 SCR 496 Supp : (2000) AIRSCW 4354 : (2000) AIRSCW 4180 : (2000) 8 Supreme 268 : (2000) 6 Supreme 58 .

Fourthly, he submitted that in the present case, the notification under Section 4(1) of "1894 Act" would clearly show that the land was acquired at the instance of opp.party No. 2 for public purposes, i.e., for industrialization through IDCO. Section 4(1) notification also made it clear that land was being acquired at the cost of public money. In such background, he submitted that acquisition was clearly under Part-II of the "1894 Act" and therefore, Part-VII of "1894 Act" and the Land Acquisition (Company) Rules, 1963 had no application to the present case. He further submitted that the documents under Annexure-H/2 would show that it was IDCO not opp. party No. 5 which had deposited the compensation amount with the opp. party Nos. 4 and 7 to be distributed to the land oustees.

Fifthly, he submitted that M.O.U. under Annexure-1 series clearly reserved the right of the Government to purchase 14% of power at variable cost if coal blocks were allocated within the State, otherwise, government would have right to purchase 12% of the power at variable cost and tariff as would be determined by Odisha Electricity Regulatory Commission. Thus, apart from industrialization for a backward area like Titilagarh, government was going to get power from opp. party No. 5. Further, the M.O.U. made it clear that local people would get employment under opp. party No. 5 in different categories of jobs, like unskilled, semi skilled, skilled and supervisory/managerial.

Sixthly, he submitted that the lands in question were non-irrigated lands and in any case the petitioners of the five writ petitions were going to get benefits under Odisha Rehabilitation and Re-Settlement Policy 2006.

Lastly, he submitted that though the petitioner Nos. 9 and 17 of W.P. (C) No. 10432 of 2012 along with others moved this Court in W.P. (C) No. 11768 of 2011, however, pursuant to liberty granted by this Court on 13.07.2011 while disposing of said writ petition, these petitioners never made any grievance before opp. party No. 1 by submitting any representation. Mr. Pattnaik also submitted that as per order dated 19.6.2012 passed by this Court in W.P.(C) No. 10431 of 2012, which also covered the rest four writ petitions, all these writ petitions have become private interest litigations and are confined to petitioners of five writ petitions only. In case they would succeed in the writ petitions, it would not lead to quashing of entire land acquisition process vis-?-vis four villages of Mahada, Sargunamunda, Pudapadar and Ghantabaheli. These petitioners would only get back their land from the process of acquisition. However, he made it clear that this was without prejudice to his earlier submission that there was no infirmity in the land acquisition process and accordingly submitted that the writ petitions were without any merit and the same should be dismissed.

11. Mr. Mukherjee, learned counsel for the opp. party No. 2 submitted that State of Odisha was suffering from power deficit and to resolve the issue, the Industrial Policy Resolution, 2007 (in short "IPR 2007") has been adopted under which

establishment of captive power plant in the State by private parties has been made permissible. He relied heavily on the order dated 14.01.2010 passed by the Odisha Electricity Reforms Commission.

Secondly, he submitted that IDCO was a nodal agency which was created by statute for securing orderly establishment of industry in the industrial area/ industrial estate in the State of Odisha. According to Mr. Mukherjee, a reading of the entire IDCO Act along with its Sections 14 and 15 would show that the IDCO has very wide powers and functions for developing industrial infrastructure in the State and at the request of IDCO, State could acquire land for many purposes covered by Sections 14 and 15 of "IDCO Act". According to them, under Section 32 of the "IDCO Act", the Government can transfer acquired land to IDCO and under Section 33 of "IDCO Act", IDCO can lease out such acquired land with certain terms and conditions. In the instant case, IDCO had only leased out a certain quantity of land in favour of opp. party No. 5 for industrial purpose for a period of 90 years.

Thirdly, he submitted that IDCO had also deposited the land cost under Annexure H/2. According to him, there were several power companies waiting for industrial land and for the said purpose different MOUs have been signed with them. If project of opp. party No. 5 became unviable, the IDCO would get back the land for allotment to other industrialists, who were waiting in queue for allotment of the industrial land. With regard to public purpose, Mr. Mukherjee submitted that the M.O.U provided for supply of electricity at a concessional rate to the State Government and guaranteed employment to a vast section of public in one of the most remote and underdeveloped areas of the State.

Fourthly, he submitted that almost 80% of the displaced persons have happily accepted the land cost. Thus, according to him the writ petition was without any merit and the same should be dismissed.

12. In his written submission, Shri Mukherjee has relied on the decisions reported in AIR 2003 SC 3141 (Maruti Suzuki India Ltd. v. Rajiv Kumar Loomba and another etc.), Urmila Roy and Others Vs. Bengal Peerless Housing Development Company Ltd. and Others, AIR 2009 SC 2086 : (2009) 4 JT 484 : (2009) 4 SCALE 250 : (2009) 5 SCC 242 : (2009) 5 SCR 834 : (2009) 4 UJ 1978 : (2010) AIRSCW 405 : (2009) 6 Supreme 470 Guruvayur Devaswom Managing Commit. and Another Vs. C.K. Rajan and Others, (2003) 7 JT 312 : (2003) 6 SCALE 401 : (2003) 7 SCC 546 : (2003) 2 SCR 619 Supp , Sooraram Pratap Reddy and Others Vs. District Collector, Ranga Reddy Distt. and Others, (2008) 9 JT 622 : (2008) 12 SCALE 367 : (2008) 9 SCC 552 and Budhi Bewa and Others Vs. Commissioner-cum-Secretary, Revenue and Disaster Management, Orissa and Others, (2014) 2 ILR (Ori) 64 .

13. Mr. Jayanta Das, learned Senior Advocate supported by Mr. Sourya Sundar Das, learned Senior Advocate representing opp. parties 5 and 6 submitted that in case of four villages, the award under Part-II of the "1894 Act" was passed

during June 2011 and possession had been taken by the State of Odisha and the writ petitions were filed in April and June, 2012, almost after a period of one year from the date of award. On this count, Mr. Das learned Senior Counsel relying on the decisions reported in *Swaika Properties Pvt. Ltd. and Another Vs. State of Rajasthan and Others*, AIR 2008 SC 1494 : (2008) 3 CLT 40 : (2008) 2 JT 280 : (2008) 2 SCALE 271 : (2008) 4 SCC 695 : (2008) AIRSCW 1574 : (2008) 1 Supreme 646 submitted that the writ petitions were not maintainable and should be dismissed on the ground of delay.

Secondly, he submitted that none of the petitioners had raised any objection to the notification issued under Section 4(1) of "1894 Act" and having not raised such objection, the petitioners were estopped in law to raise any challenge to notification under Sections 4 and 6 of "1894 Act" at a belated stage. In this context, Mr. Das relied on the decision reported in *Delhi Administration Vs. Gurdip Singh Uban and Others*, AIR 2000 SC 3737 : (2000) 9 JT 245 : (2000) 5 SCALE 651 : (2000) 7 SCC 296 : (2000) 2 SCR 496 Supp : (2000) AIRSCW 4354 : (2000) AIRSCW 4180 : (2000) 8 Supreme 268 : (2000) 6 Supreme 58 .

Thirdly, Mr. Das, submitted that the petitioners have not been given the details of land particulars nor all copies of R.O.R. have been filed to substantiate the land particulars of the petitioners in all the writ applications. Most of the R.O. Rs submitted were not legible. According to him this itself created disputed questions of fact, which ought not to be adjudicated in writ petitions. In this context, he relied on *Rajinder Kishan Gupta and Another Vs. Union of India (UOI) and Others*, AIR 2010 SC 2831 : (2010) 9 JT 240 : (2010) 9 SCC 46 : (2010) 10 SCR 172 .

Fourthly, he submitted that Section 4(1) notifications would clearly show that land was purported to be acquired for a public purpose, i.e., for industrialization through IDCO at public cost. After the State Government acquired the land, the same had been transferred to IDCO and IDCO had leased a sizable quantum of land, not the entire acquired land to opp.party No. 5 which was a public limited company. Since the land was acquired by the State Government for public purpose at public cost, according to Mr. Das, the acquisition was clearly under Part-II of "1894 Act" and in such back ground Part-VII of "1894 Act" and Land Acquisition (Company) Rules, 1963 had no application to the present case. He reiterated that opp. party No. 5 was only a lessee to a part of entire acquired land and power plant being an infrastructure and public utility industry, no illegality had been committed by the State in its action.

Fifthly, he submitted that the instant case was clearly covered under section 3(f) (iv) of the "1894 Act", which made it clear that making provision of land for a corporation owned and controlled by the State was for public purpose. Having regard to the language of notification under Section 4(1) where it had been made clear that land had been acquired for industrialization through IDCO at public cost, therefore, in the instant case, the land had been acquired for public purpose. In such background, Part-II of the "1894 Act" was clearly attracted. He

further submitted that in this case acquisition had resulted in vesting of acquired land with the Government. Thus, till date government continues to be the owner of the land. Government has only transferred the land in question to IDCO on long term basis along with possession of the part of the acquired land. IDCO in turn had leased the land to opp. party No. 5 for the purpose of setting up a Thermal Plant for a fixed tenure on payment of rent and premium. All these would show that land had been acquired for public purpose and the same had been acquired correctly by applying Part-II of "1894 Act".

Sixthly, he submitted that a reading of MOU under Annexure-1 series would make it clear that power would be made available to the State at cheaper rate, i.e., only at variable cost. Further, the MOU stipulated that employment preference to be given to the local people. He also submitted that the power project would generate numerous employment opportunities directly or indirectly for the local people. In view of the above, he contended that setting up a power plant was for a public purpose. According to him, establishment of such industries by a public company like opp. party No. 5 could be said to be imbued with public purpose. He also submitted that merely because initiation of steps for acquisition of land was made after signing of MOU, the same would not mean that such acquisition was for private purpose. In this context he relied on different decisions by the Hon''ble Supreme Court as reported in *Pratibha Nema and Others Vs. State of M.P. and Others*, AIR 2003 SC 3140 : (2003) 6 JT 256 : (2003) 5 SCALE 622 : (2003) 10 SCC 626 : (2003) 1 SCR 890 Supp : (2003) AIRSCW 3830 , *Sooraram Pratap Reddy and Others Vs. District Collector, Ranga Reddy Distt. and Others*, (2008) 9 JT 622 : (2008) 12 SCALE 367 : (2008) 9 SCC 552 and *Nand Kishore Gupta and Others Vs. State of U.P. and Others*, AIR 2010 SC 3654 : (2010) 10 JT 521 : (2010) 10 SCC 282 : (2010) 8 UJ 4154 : (2010) AIRSCW 5660 : (2010) 7 Supreme 949 .

Seventhly, he submitted that no payment had been made by opp. party No. 5 to opp. party No. 7. All payments had been made by opp. party No. 5 to IDCO and it was the IDCO which had deposited the compensation amount with opp. party No. 7 for payment. Once the amounts were paid by opp. party No. 5 to IDCO, the said amount/money got merged into funds of the IDCO. Thus, it could not be argued that payment of cost of land by the opp. party No. 5-company to IDCO made the present acquisition, an acquisition under Part-VII of "1894 Act".

Eighthly, he submitted that basic idea of acquisition under Part-VII of the "1894 Act" was total transfer of ownership. In the present case, admittedly there was no total transfer of ownership in favour of companies. Therefore, Part-VII of "1894 Act" was not at all attracted to the present case. Accordingly, Land Acquisition (Company) Rules, 1963 had no applicability to the present case.

Ninthly, he submitted that even in absence of notification for establishment of an industrial area/industrial estate, IDCO could request the State Government for acquisition of land. In order to fortify his argument, Mr. Das learned Senior Counsel for opp. parties 5 and 6 relied on the decisions reported in *Smt.*

Somavanti and Others Vs. The State of Punjab and Others, AIR 1963 SC 151 : (1963) 33 CompCas 745 : (1963) 2 SCR 774 , State of Karnataka and Another Vs. All India Manufacturers Organization and Others, AIR 2006 SC 1846 : (2006) 11 JT 337 : (2006) 4 SCALE 398 : (2006) 4 SCC 683 : (2006) 2 SCR 86 Supp : (2006) AIRSCW 2234 : (2006) 5 Supreme 819 , Rajinder Kishan Gupta and Another Vs. Union of India (UOI) and Others, AIR 2010 SC 2831 : (2010) 9 JT 240 : (2010) 9 SCC 46 : (2010) 10 SCR 172 and the decisions of this Court rendered in Budhi Bewa and Others Vs. Commissioner-cum-Secretary, Revenue and Disaster Management, Orissa and Others, (2014) 2 ILR (Ori) 64 and W.P. (C) No. 16815 of 2012 and also relied on decision of the Full Bench rendered in this case on 30.06.2015.

Lastly, he submitted that the present writ petition was not maintainable as it was hit by principle of res judicata. In the said context, he relied on the decision reported in State of Karnataka and Another Vs. All India Manufacturers Organization and Others, AIR 2006 SC 1846 : (2006) 11 JT 337 : (2006) 4 SCALE 398 : (2006) 4 SCC 683 : (2006) 2 SCR 86 Supp : (2006) AIRSCW 2234 : (2006) 5 Supreme 819 .

14. In reply to various contentions raised by the opp. parties, Mr. Mishra, learned counsel for the petitioners submitted that the decisions cited by the opp. parties were factually distinguishable and had no application to the present case and he reiterated his earlier submissions that this was a case involving acquisition of land out and out for a company, which could not be said to be for a public purpose and having not followed Part-VII of "1894 Act", which dealt with acquisition of land for the company, the entire proceeding had been vitiated. He reiterated that pre-requisites for applying "1980 Act" were absent in the present case. In support of his contention that acquisition of the land for company could only be made in accordance with Part-VII of the Land Acquisition Act and not in terms with Part-II of the land Acquisition Act, he relied on the decision reported in Rajiv Pujari and Others Vs. State of Orissa and Others, (2010) 2 ILR (Ori) 1008 : (2011) 1 OLR 130 Supp . With regard to maintainability of the writ petitions on the ground of delay he submitted that the same were maintainable relying on the decisions reported in V.K.M. Kattha Industries Pvt. Ltd. Vs. State of Haryana and Others, (2013) 9 AD 81 : AIR 2013 SC 3557 : (2013) 6 CTC 216 : (2013) 11 JT 334 : (2013) 4 RCR(Civil) 997 : (2013) 10 SCALE 346 : (2013) 9 SCC 338 , Babu Ram and Another Vs. State of Haryana and Another, (2009) 13 JT 99 : (2010) 157 PLR 232 : (2009) 13 SCALE 162 : (2009) 10 SCC 115 : (2009) 14 SCR 1111 : (2009) 9 UJ 4308 . Further, he relied on the decisions reported in Devinder Singh and Others Vs. State of Punjab and Others, AIR 2008 SC 261 : (2008) 2 CLT 654 : (2007) 12 JT 256 : (2007) 11 SCR 475 : (2007) 2 UJ 1223 : (2007) AIRSCW 6692 : (2007) 7 Supreme 206 in favour of his argument that when entire compensation has been paid by opp. party No. 5 and there was no decision by the Government to pay part of the compensation from the inception, therefore, the acquisition could not turn to one under Part-II of "1894 Act". Lastly, he relied on the decisions reported in 2012 (1) OLR SC 436

(Raghubir Singh Sehrawat v. State of Haryana and others) to highlight that before acquiring private land, the State or its instrumentalities should as far as possible use the land belonging to the State for the specific public purpose. If the acquisition of private land was absolutely necessary, then the concerned authority must comply with the statutory provisions or rules of natural justice before undertaking acquisition of land.

15. Considering the submissions made by the parties, the following issues arise for our consideration.

"(1) Whether the writ petitions are to be dismissed on the ground of belated filing?

(2) Whether the present writ petitions are barred by principle of res judicata?

(3) Whether the entire proceeding is vitiated on account of non-publication of notification under Section 4(1) in two newspapers and on account of lack of publicity in the locality?

(4) Whether non-filing of objection under Section 5-A would nonsuit the petitioners?

(5) Whether the writ petitions involve adjudication of disputed questions of facts when there exist dispute as to land particulars of the petitioners?

(6) Whether in the present case acquisition has been made for any public purpose?

(7) Whether in the facts and circumstances of the case Part-VII of "1894 Act" would apply and whether initiation of the process for acquisition of land after entering into MOU would make such acquisition, an acquisition for a company and thus would attract Part-VII of "1894 Act"?

(8) Whether IDCO was brought in later to regularize acquisition process, which was already vitiated?"

Findings

16. Issue No. 1. From the documents filed along with affidavits dated 18.04.2015 pertaining to W.P. (C) No. 10431 of 2012, W.P. (C) No. 10432 of 2012, W.P. (C) No. 10433 of 2012 and W.P. (C) No. 10436 of 2012, the following informations are forthcoming relating to Section 4(1) notification and Section 6(1) declaration of four villages which are given in a tabular form below:

Awards with regard to above four villages were made during June, 2011. W.P. (C) No. 7163 of 2012 was filed in April, 2012. Other four writ petitions were filed in June, 2012. According to opp. parties, under such circumstances, the writ petitions are grossly belated. However, according to learned counsel for the petitioners, the writ petitions have been filed within reasonable time and thus there has not been any delay in filing of the writ petitions. In this context, the petitioners rely on the decisions reported in V.K.M. Kattha Industries Pvt. Ltd. Vs.

State of Haryana and Others, (2013) 9 AD 81 : AIR 2013 SC 3557 : (2013) 6 CTC 216 : (2013) 11 JT 334 : (2013) 4 RCR(Civil) 997 : (2013) 10 SCALE 346 : (2013) 9 SCC 338 and Babu Ram and Another Vs. State of Haryana and Another, (2009) 13 JT 99 : (2010) 157 PLR 232 : (2009) 13 SCALE 162 : (2009) 10 SCC 115 : (2009) 14 SCR 1111 : (2009) 9 UJ 4308 , whereas the opp. parties 5 and 6 have relied on the decisions reported in Swaika Properties Pvt. Ltd. and Another Vs. State of Rajasthan and Others, AIR 2008 SC 1494 : (2008) 3 CLT 40 : (2008) 2 JT 280 : (2008) 2 SCALE 271 : (2008) 4 SCC 695 : (2008) AIRSCW 1574 : (2008) 1 Supreme 646 and a decision of the Division Bench of this Court dated 23.04.2014 passed in W.P. (C) No. 16815 of 2012. In the decision reported in Swaika Properties (P) Ltd. (supra), notification under Section 52(2) (which is pari materia with Section 4 of "1894 Act") of the Rajasthan Urban Improvement Act, 1959 was issued on 25.06.1975. On 23.08.1975 another notice was issued by the State under the above noted Section 52(2) for acquisition of land. The appellant therein filed objection on 8.9.1975. On 8.2.1984, government issued declaration under Section 52(1) of the aforesaid Act (which is equivalent to Section 6 of the "1894 Act"). After these notices were issued the appellant filed writ petition before Calcutta High Court. Ultimately, the Hon"ble Supreme Court held that Calcutta high Court had no territorial jurisdiction over the matter. On 17.02.1987, possession of land in question was alleged to have taken over by the authorities. In 1987 the appellant therein filed writ petition before High Court of Rajasthan and in 1989 they withdrew the said writ petition and government approved the award also in 1989. Again in 1989, another writ petition was filed challenging the notifications dated 8.2.1984 and 17.2.1987 by which possession was alleged to have been taken. Relying on earlier Supreme Court decision, the Hon"ble Supreme Court took a view that writ petition having been filed after taking over possession, the case deserved to be dismissed on the ground of delay and laches. So far as the case of Gyanendra Kumar Nayak in W.P. (C) No. 16815 of 2012 is concerned, in that case, this Court has come to hold that the said writ suffered from gross delay and laches as because though there the 4(1) notification was issued on 10.03.2010, 6 (1) declaration was made on 29.2.2012 and writ was filed on 7.9.2012. In such background, this Court came to a finding that writ filed by Gyanendra Kumar Nayak was grossly delayed. Now coming to the decision cited by Mr. Mishra, learned counsel for the petitioners, we may first refer to the decision in the case of M/s. V.K.M. Kattha Industries Pvt. Ltd. (supra). In the said case, Hon"ble Supreme Court distinguished Swaika Properties (P) Ltd. case (supra) as that was a case where writ was filed two years after taking over the possession. In V.K.M. Kattha case, writ was filed within five weeks of passing of the award. In the present case, first writ petition, i.e., W.P. (C) No. 7163 of 2012 was filed within one year of the award and less than one year of taking over the possession. If parameters given in M/s. V.K.M. Kattha Industries Pvt. Ltd. (supra) are taken into account, we are of the view that these writ petitions cannot be dismissed on the ground of delay as the same have been filed within 10 to 13 months from the date of award. In the case of Swaika Properties (P) Ltd. (supra), there was delay

of more than two years in filing the writ petition after possession was taken over. Here in this case, the delay is not that much. In Gyanendra Kumar Nayak's case, this Court has not taken into account the delay in filing of the writ petition from the date of award or from the date of taking over the possession. Thus, the said case is factually distinguishable. In the decision reported in Baburam and another (supra), Section 4(1) notification was issued on 23.11.2005, on 2.1.2006 declaration under Section 6 was made and on 23.5.2006 award was pronounced. Prior to that on 15.2.2006, suit has been filed. Another suit was also filed on 12.4.2006. Also in 2006 the writ petition was filed. In such background, it was held that there was no delay. No doubt in the present case, the facts indicate that there has been some delay in filing the writ, but taking a liberal view of the matter, we hold that the writ petitions involving illiterate village folk from a backward district of Odisha cannot be dismissed on the ground of delay. Further, it may be noted here that petitioner Nos. 9 and 17 of W.P. (C) No. 10432 of 2012 had approached this Court on 29.4.2011 along with others by filing W.P. (C) No. 11768 of 2011, i.e., much prior to passing of award in June 2011 and by filing W.P. (C) No. 10432 of 2012 along with others they are pursuing their remedies. This is an additional reason for not dismissing the present writ petitions on the ground of delay.

17. Issue No. 2

Though opp. party Nos. 5 and 6 relying on the case of State of Karnataka and another (supra) pleaded that present writ petitions were not maintainable on the ground of res judicata vis-?-vis the earlier writ petition bearing W.P. (C) No. 11768 of 2011. It may be noted here that the earlier writ petition was filed by the petitioner Nos. 9 and 17 along with others of W.P. (C) No. 10432 of 2012. In the earlier case and present case, i.e., W.P. (C) No. 10432 of 2012, prayers are different and there was no adjudication on merits in the earlier case. Further, in other four writs, which are being dealt with here petitioner Nos. 9 and 17 are not parties. In such background, we refuse to accept the plea of learned counsel for opp. party Nos. 5 and 6 that the present writ petitions are barred by principle of res judicata.

18. Issue Nos. 3 and 4

It is one of the major contentions of learned counsel for the petitioners that the petitioners had no knowledge about notifications under Section 4(1), as the same were not published in two newspapers and there was no public notice of substance of such notification given in the locality. Therefore, they were not in a position to file objection and accordingly Mr. Mishra, learned counsel for the petitioners submitted that the process of land acquisition proceeding had been vitiated. In this context, he relied on the decision in M/s. V.K.M. Kattha Industries Pvt. Ltd. (supra). The learned Addl. Government Advocate and Mr. Jayanta Das, learned Senior Counsel have refuted such contentions of the petitioners by stating that the provisions relating to notification as contained in Section 4(1) and declaration under Section 6 of "1894 Act" with regard to various modes of

public notification have been strictly complied with. In this context, both Mr. Das and Mr. Pattnaik, the learned Addl. Government Advocate pointed out that pursuant to publication of notifications under Section 4(1) of "1894 Act", 30 objections were received from the villagers of village-Pudapadar, 25 objections from the villagers of village-Sargunamunda, 45 objections from the villagers of village-Ghantabaheli and 22 objections from the villagers of village-Mahada. Thus, it is wrong to say that there was no adequate notifications under Section 4 of "1894 Act".

19. Considering such submissions and relying on the table indicated under Issue No. 1, this Court comes to a conclusion that Section 4(1) notifications have been published in different modes in accordance with law. Pursuant to such publication, objections were received from four villages to which the petitioners belong. Thus, it is not believable that the writ petitioners had no adequate notice of the acquisition proceedings. Rather, it shows that they have been negligent by not filing their objections. Similarly, facts given in the above noted table clearly bear out that declarations under Section 6 were also published in different modes as required under law. In the case of M/s. V.K.M. Kattha Industries Pvt. Ltd. (supra), facts are clearly different as there was no whisper about publication of substance of notification in the locality as provided under Section 4(1) of "1894 Act" which is not the case here. As per the decision reported in Delhi Administration Vs. Gurdip Singh Uban and Others, AIR 2000 SC 3737 : (2000) 9 JT 245 : (2000) 5 SCALE 651 : (2000) 7 SCC 296 : (2000) 2 SCR 496 Supp : (2000) AIRSCW 4354 : (2000) AIRSCW 4180 : (2000) 8 Supreme 268 : (2000) 6 Supreme 58 , it is well settled that the claimants/petitioners who have not filed objection to Section 4(1) notification cannot be permitted to contend that Section 5-A enquiry is vitiated nor can they be permitted to seek for quashing the declaration under Section 6 of "1894 Act" on that ground but they can only challenge on the ground that the purpose for which the land was acquired was not for a public purpose. Therefore, on these issues, our finding is that though the petitioners cannot contend that statutory requirements of Sections 4 and 6 have not been followed on account of non-publication of the notifications and proclamations in newspapers and proclamation at the locality, therefore they cannot take a plea of breach of violation of natural justice; however, they can still take a plea that originally notifications were not for public purpose.

20. Issue No. 5

Though initially the writ petitions had flavour of PILs, however, after modification of interim order on 19.6.2012 confining the same to the petitioners only, it is clear that these cases are now private interest litigations. In such background, it was the duty of the petitioners to point out/produce the land records in their favour. Initially no such land records were filed along with writ petitions. However, while filing the rejoinders, the petitioners have filed land records. Most of these land records filed along with rejoinder are not legible. However, by way of additional affidavits and by filing charts dated 9.2.2015 showing details of land

sought to be acquired from the petitioners, the petitioners tried to impress us that in reality their lands were sought to be acquired. Mr. Mishra, learned counsel appearing for the petitioners made a fervent plea that since most of the petitioners are village folks and have collected the records with much difficulty, the same may be accepted. In such background taking a lenient view of the matter, in our view, though there are some disputes, it cannot be said that vis-à-vis the land particulars of the petitioners there exists serious dispute of facts. In such background, the decision relied on by opp. parties 5 and 6 in case of Rajinder Kishan Gupta (supra) with their emphasis at para-23 will be of no help to them. Accordingly, we are not going to dismiss these writ petitions on that account.

21. Issue Nos. 6 and 7

Now, coming to the core issue of the case, we have to refer to Section 3(f) of "1894 Act". The said Section defines expression "public purpose". It is an inclusive definition that includes the provision of land for a corporation owned or controlled by the State. In other words, it means that when a land is acquired for a Corporation owned or controlled by the State it can be described as being acquired for public purpose. Section 3(f) of "1894 Act" also makes it clear that when land is being acquired for a company, the same cannot be described as for public purpose. The expression "company" has been defined at Section 3(e) of "1894 Act". Now let us scan various decisions cited by the parties. In the case of Prativa Nema (supra), land was acquired by the State Government for the purpose of a diamond park after signing of MOU with the diamond merchant/companies dealing with diamond, the Hon'ble Supreme Court has held that initiation of step for acquisition of land after entering into MOU would not mean that it was only for private purpose. In this case, the Hon'ble Supreme Court made it clear that funds from which compensation was paid played a vital role in deciding whether it was an acquisition under Part-II of "1894 Act" for public purpose or for a company. It was the source of funds that decided whether Part-II of "1894 Act" or Part-VII of "1894 Act" would apply. Referring to Explanation-2 to Section 6(1) of "1894 Act" it also made clear that even a minimal contribution made by the Government concern could also make the acquisition one for public purpose. In other words, if compensation money comes from a public fund then it is an indicator that acquisition proceeding is for a public purpose and in that case Part-VII of "1894 Act" will have no application. The Supreme Court in that decision also pointed out that an industry in private sector ultimately benefits the people and satisfaction of the Government to exercise its judgment in determining public purpose should not be lightly faulted and this must remain uppermost in the minds of the Court. The Court should keep in mind that even when private parties/companies had given advance payments to government owned corporation, the said money merges with the fund of Nigam and became public money. Thus, if money came from such a fund, clearly Part-II of "1894 Act" would apply. In the instant case, as has been seen under Annexure-H/2, IDCO has deposited the compensation money with the opp. party No. 4 for

payment. The notification under Section 4(1) clearly shows that the acquisition was being made at public/governmental cost/money. Further, as per the case in Sooraram Pratap Reddy (supra), it has been made clear by Hon"ble Supreme Court that the main distinction between Part-II and Part-VII of "1894 Act" depends on from which source the cost of acquisition is coming. When payment is wholly/partly out of public revenue/when the payment of land oustees is one out of public revenue, then the acquisition is covered under Part-II, but where total payment is made from the funds of the company to the land oustees, then same would be covered by Part-VII of "1894 Act". Here in the instant case, compensation money has gone from the fund of IDCO, there exists no evidence to show that payment of compensation has been made directly by opp. party No. 5 to the land oustees. Further, a perusal of records show that while opp. party No. 5 paid Rs. 6,38,16,922/- to IDCO vide letter dated 22.11.2010; IDCO has paid much more to the tune of Rs. 6,80,60,576/- (Annexure-H/2 of W.P. (C) No. 10432 of 2012) to the concerned Tahasildar-cum-LAO, Titilagarh, Bolangir. In such background, the present case is clearly covered by Part-II not by Part-VII of "1894 Act". In the above noted decision, Hon"ble Supreme Court has made it clear that in order to assess public purpose holistic approach is to be made and parts cannot be split into compartments. Court can only interfere when there is no public purpose at all or there is mala fide and colourable exercise of power and this decision has reiterated that the implication of public purpose is wide and it is for the State to decide existence of public purpose. All things can be said to be for public purpose if the public derives any advantage out of the same. The decision rendered in the case of Nand Kishore Gupta (supra) lays down that purpose complimentary to public purpose is also a public purpose. Like earlier decision it makes clear that money coming to the coffers of a government authority becomes public money. At the same time this decision lays down another test. To determine whether the case is covered under Part-II or Part-VII of "1894 Act", this test is whether there has been total transfer of ownership to the company. In case of such total transfer of ownership to the company, provisions of Part-VII are attracted. In the instant case, the facts situation does not show total transfer of land to the opp. party No. 5. As it appears, after the land got vested with the Government, part of the same has been transferred to IDCO on long term basis and on 28.8.2012 IDCO has leased a major portion of the land to opp. party No. 5 for a particular period in order to enable it to establish the power plant, with a number of conditions including eventualities providing for termination of lease and right of re-entry and re-possession. In such factual background, it cannot be said that ownership of the land in question has been or is being totally transferred to opp. party No. 5. Thus, as per this test also Part-VII has no application to the present acquisition proceeding. In such background it is clear that as per the above twin tests, the instant case does not attract Part-VII of "1894 Act", rather Part-II of the "1894 Act" is attracted. Therefore, it can safely be concluded that no illegality has been committed in the instant land acquisition proceeding. All the above noted decisions make it clear that the expression "public purpose" has a very wide meaning and the same

cannot be ignored only because the land acquired by the State is ultimately going to be leased to a public limited company like opp.party No. 5, which is going to establish a power plant. Even as per MOU under Annexure-1 series the State Government is going to get 15% or 12% of the power depending on the facts indicated therein from opp. party No. 5 at a tariff to be determined by Odisha Electricity Regulatory Commission. Further, the said MOU contained provision relating to employment of local people under unskilled/semi-skilled/skilled and Supervisory categories. Lastly, the fact that the notifications under Section 4(1) of "1894 Act" clearly show that land is being acquired for public purpose for industrialization through IDCO at public cost. These clearly show that land was being acquired for IDCO, which is a Government of Odisha undertaking. This fact situation is further fortified from the fact that after acquisition, government has transferred the land measuring Ac.392.20 decimals to IDCO on 31.7.2012. The argument that since the land acquisition proceeding was ab initio vitiated and therefore, IDCO was brought in to regularize the proceeding is not correct as the role to be played by IDCO was clearly indicated at the very beginning in MOU dated 7.2.2009. Thus, in this case public purpose is well established.

Now, coming to the decisions cited by the petitioners, it may be stated that the facts of the case reported in *Devinder Singh and Others Vs. State of Punjab and Others*, AIR 2008 SC 261 : (2008) 2 CLT 654 : (2007) 12 JT 256 : (2007) 11 SCR 475 : (2007) 2 UJ 1223 : (2007) AIRSCW 6692 : (2007) 7 Supreme 206 are factually distinguishable and have no application to the present case. In the said case, the notification under Section-4 indicated that the government of Punjab wanted to acquire the land for a public purpose namely for setting up the Ganesha Project, M/s. International Tractors Ltd. at Village Chak Gujran, Tehsil and Distt. Hoshiarpur. Thus the notification unlike the present case indicated acquisition, both for public purpose and for a company and while taking exception to same, the Hon"ble Supreme Court has made it clear that a declaration has to be made either for a public purpose or for a company but not for both. Further in the present case, compensation has been paid out of funds of IDCO. Thus, the present case is clearly covered under Explanation-2 to second proviso of sub-section (1) of Section 6 of 1894 Act.

22. The next decisions relied on by Mr. Mishra, learned counsel for the petitioners are *Rajiv Pujari and Others Vs. State of Orissa and Others*, (2010) 2 ILR (Ori) 1008 : (2011) 1 OLR 130 Supp and *Rajkumar Gunawant and Another Vs. State of Orissa and Others*, (2012) 114 CLT 107 in favour of his submission that whenever there is an acquisition in favour of a company whether private or public the same can be made in accordance with the provision of Chapter-VII of Land Acquisition Act, but not in terms of Chapter-II of Land Acquisition Act. With regard to the decision in *Rajiv Pujari* (supra), a perusal of Para-42 of the said judgment shows that facts of that case are different. Here, in the Section 4(1) notification, there exists no reference to opp. party No. 5. Therefore, the said decision has no application to the present case. So far as the case of *Rajkumar*

Gunawant (supra) is concerned, here also the facts are totally different. In that case notice was issued under Section 4(1) read with Section 17(4) of Land Acquisition Act and in Section 4(1) notification, the name of M/s. Ariyan Iron Steel Company Ltd. was clearly indicated unlike the present case. In the instant case, no doubt the sequence of events would show that process was initiated with the proposal of opp. party Nos. 5 and 6, but by that itself will not make it an acquisition for company/for private purpose and not for public purpose as discussed earlier. For this purpose, we have to see several things. Section 4(1) notifications issued under "1894 Act" clearly speak about acquisition of land for public purpose, i.e., for industrialization through IDCO (opp. party No. 2) at public cost. Here, IDCO is in the picture from very beginning, i.e., at the stage of signing of MOU on 7.2.2009. The MOU speaks about supply of some percentage of power to State by opp. party No. 5. Further, opp. party No. 5 undertook to provide employment to local people. Here, opp. party Nos. 5 and 6 have not made any direct payment of compensation to land oustees. The compensation amount was undisputedly made available by opp. party No. 2 to the Tahasildar-cum-Land Acquisition Officer, Titilagarh, Bolangir. No doubt, the opp. parties 5 and 6 have paid cost of land to opp. party No. 2. However, as per settled principle of law, such contribution merged with the funds of IDCO and since the compensation amount has been deposited by IDCO, it is no more open to dispute that the land has been acquired at public cost. It is equally well settled that money going from coffer of Government Corporation like IDCO is public money. Thus, it makes the acquisition in the instant case, an acquisition for public purpose. Hence, the acquisition has been rightly made under Part-II of "1894 Act". Besides the above doctrine of merger as enunciated by the Hon"ble Supreme Court, it is further to be noted that in the present case there is no total transfer of ownership of land to opp. party No. 5. Here, undisputedly, the land has been acquired by State Government and out of the same, the Government has transferred Ac.392.22 decimals to the IDCO. The IDCO on its part had leased Ac.392.22 decimals to opp. party No. 5. In such background, relying on the decision in Nand Kishore Gupta (supra), it can safely be said that since there is no total transfer of ownership of land to opp. party No. 5, Part-VII of "1894 Act" has no application to the present case. For all these reasons, we are of the view that Part-II of "1894 Act" has been correctly applied to the present case.

23. Issue No. 8

Now, the contention of learned counsel for the petitioners vis-?-vis "1980 Act" requires to be discussed. With regard to role of IDCO, it was contended by learned counsel for the petitioners that acquisition process was initiated by the State Government to acquire the land for opp. party No. 5-company and subsequently IDCO was brought into picture in order to regularize the acquisition. Mr. Mishra further submitted that notification dated 4.8.2009 (Annexure-F/6 filed in W.P. (C) No. 10432 of 2012) had no relevance as the area could be notified as industrial area only after acquisition was made and not before acquisition and by the time said notification was published, the area in

question had not been acquired. According to him by such publication the opp. parties have made an attempt to bring the acquisition within the purview of "1980 Act". Mr. Das, learned Senior Advocate had submitted that MOU dated 7.2.2009 clearly referred to IDCO and even in absence of notification for establishment of industrial area/industrial estate, IDCO could request for acquisition of land within the parameters of "1980 Act". A reading of "1980 Act" shows that it nowhere restricts function of IDCO only for managing notified industrial estates and developing notified industrial areas. A reading of Sections 14 and 15 of "IDCO Act" would show that it has a number of functions to discharge. The functions of IDCO are very broad under Section 4(i) of "1980 Act". Its functions cannot be confined to what has been delineated under Sections 14(ii)(a) and 14(ii) (b) only. This has been made clear by the Full Bench judgment dated 30.6.2015 referred to earlier. Similarly, under Section 15(a) of "1980 Act", it has got the power to acquire lease, exchange or otherwise transfer of any property held by it on such conditions as may be deemed proper by the Corporation. As per Section 15(b), IDCO has the power to take on lease and to execute works as may be necessary for the purpose of carrying out its duties and functions. Thus, IDCO has got both power to take land on lease and to lease out the same for carrying out its duties and function. Section 14(ii)(c) makes it clear that it has got the power to undertake schemes, works either jointly with corporate body or with the government or local. Thus, even without notification dated 4.8.2009 under Annexure-F/6, under Section 31 of "1980 Act", it has got power to request the government for acquiring the land on its behalf, which can be put to various use as indicated in Sections 14 and 15 of "1980 Act". As explained earlier such land can be leased out by IDCO. Here after the case of opp. party No. 5 was recommended by SLSWCA meeting held on 16.10.2008; the MOU was signed on 7.2.2009. In the said MOU, it was clearly indicated that Government would acquire the required land and hand over the required land to opp. party No. 5 through IDCO and opp. party No. 5 agreed to pay cost of land and other charges to IDCO. Thus from very beginning IDCO was there in the picture. Further, vide Annexure-E/2 series filed in W.P. (C) No. 10432 of 2012, the IDCO has made such a request for acquisition of land to the governmental authorities for industrial development. Once such request is made, the same should be deemed as is being made for public purpose under Section 31 of the "1980 Act". It is important to note here that the requisition under Annexure E/2 series nowhere contains any reference to opp. party No. 5. In tune with the same, Section 4(1) notifications were issued by the government with regard to all four villages. All these things would again make it clear that IDCO was in the picture from the very beginning and the land has been acquired as per the requisition of IDCO in tune with Section 31 of "1980 Act" and IDCO has done no illegality in leasing the land in question to opp. party No. 5 for establishing a coal based power plant.

24. Now to the other two decisions cited by Mr. Mishra, learned counsel for the petitioners. So far as reliance of Mr. Mishra on interim order reported in Nishakar

Khatua and Others Vs. State of Orissa and Others, (2012) 1 ILR (Ori) 19 is concerned, it may be noted here that the relevant writ application, i.e., W.P. (C) No. 14884 of 2011 was dismissed on 26.8.2013 with all interim orders vacated. Thus, the interim order can be of no help to the petitioners, which ceased to exist after 26.08.2013. Relying on the decision reported in 2012 (1) OLR 436 (Raghubir Singh Sehrawat v. State of Hariyana and others), Mr. Mishra submitted that before acquiring private land, the State and/or the agency or instrumentalities should as far as possible use the land belonging to the State for specified purpose. If the acquisition of private land becomes absolutely necessary, then the concerned authorities must strictly comply the relevant statutory rules and the rules of natural justice. In the instant case, the petitioners have nowhere pointed out in details that despite existence of Government land in the locality, the Government went for acquisition of private land. Further, as indicated earlier, here the acquisition has been done in tune with principles of natural justice as notifications under Sections 4 and 6 of "1894 Act" were duly published.

25. For all these reasons, we answer the issue Nos. 1,2,4 and 5 in the negative, thus in favour of the petitioners; issue No. 3 in negative, thus in favour of opp. parties, issue No. 6 in positive in favour of opp. parties. Issues Nos. 7 and 8 in negative, thus in favour of opp. parties.

Thus, in the net result, the writ petitions are dismissed and accordingly all interim orders stand vacated. No cost.

P. Mohanty, J.

I agree.