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**(2011) 09 OHC CK 0026**  
**In the Orissa High Court**  
**Case No : Misc. Case No. 8071 of 2011**

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|----------------------------|----|------------|
| Nishakar Khatua and Others | Vs | APPELLANT  |
| State of Orissa and Others |    | RESPONDENT |

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**Date of Decision :** 09-09-2011

**Acts Referred:**

Companies (Land Acquisition) Rules, 1963 — Rule 4, 5, 6  
Constitution of India, 1950 — Article 14, 19, 21, 226, 300A  
Land Acquisition Act, 1894 — Section 11, 17, 17(2), 17(4), 3  
Orissa Industrial Infrastructure Development Corporation Act, 1980 — Section 14, 15, 2, 31  
Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 — Section 2

**Citation :** (2012) 1 ILR (Ori) 19

**Hon'ble Judges :** V. Gopala Gowda, C.J;B.N. Mahapatra, J

**Bench :** Division Bench

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## Judgement

V. Gopala Gowda, C.J.—The petitioner nos. 1 to 6 are the owners of the lands located at villages Dinkia, Govindpur, Bhuyanpal, Polanga, Bayanala Kandha, Nolia Sahi and Nuagaon covered under the impugned notifications Annexure-2 series issued under Sections 4 and 6 of the Land Acquisition Act. They have filed the present writ petition on their behalf and on behalf of the other land owners whose lands are covered under the said notifications and who have no access to justice seeking the following reliefs urging various facts and legal contentions.

- (i) admit and allow this writ application with costs;
- (ii) declare/hold that the land acquisition proceedings initiated under and pursuant to Annexure-2 series hereto are bereft of jurisdiction and are ab initio void and non-est in the eyes of law and accordingly, quash the same with exemplary costs with consequent direction to return any land forcibly and illegally taken pursuant to Annexure-2 series; and
- (iii) direct/order that the possession, nature, character and use of the concerned land owners in villages Dinkia, Govindpur, Bhuyanpal, Polanga, Nolia Sahi,

Bayanala Kandha and Nuagaon (affected by the Annexure-2 series hereto) shall not be altered (and accordingly maintain status quo), pending disposal of this writ petition; and

(iv) pass such other orders/directions as may be deemed fit and proper (including appropriately moulding the reliefs) in the bona fide interest of justice.

2. In the said writ petition, Misc. Case No. 8071 of 2011 has also been filed praying for the following interim reliefs urging various facts and placing reliance upon the documents produced in support of the writ petition.

(i) admit and allow this misc. application; and

(ii) direct/order that no pursuant and consequential actions/steps shall be taken pursuant to the notifications as at Annexure-2 series to the writ application, pending disposal of the writ application; and

(iii) direct/order that further operation of the orders/notifications as at Annexure-2 series shall remain halted pursuant to an order of stay against the said orders/notifications, pending disposal of the writ petition; and

(iv) direct/order that status quo as on date shall be maintained regarding possession, right, title, interest, nature, character and use of the lands covered by the orders/notifications as at Annexure-2 series to the writ petition, pending disposal of the writ petition; and

(v) pass such other order/directions as may be deemed fit and proper in the bona fide interest of justice.

3. Relevant brief facts are stated for the purpose of examining as to whether the petitioners herein have made out a prima facie case for granting the prayers made in the Misc. Case as extracted supra by this Court during the pendency of the writ petition.

4. The State Government has issued the impugned notifications under Sections 4 and 6 of the Land Acquisition Act (hereinafter called the L.A. Act") to acquire the lands in favour of the proposed Steel Plant of M/s. POSCO India Pvt. Ltd. (hereinafter called in short "POSCO"). The acquisition proceedings have been started at the instance of the Orissa Industrial Infrastructure Development Corporation (hereinafter called in short "the Corporation"), a statutory Corporation having its registered office at IDCO Towers, Janpath, Bhubaneswar to acquire lands in favour of POSCO, a Company registered under the Companies Act, 1956 having its registered office at Fortune Towers, Chandrasekharapur, Bhubaneswar represented by its Managing Director who is opposite party no.4 in the writ petition. The Corporation made requisition to the District Collector of Jagatsinghpur to acquire the land for the purpose of establishing the proposed Steel Plant by POSCO. Accordingly, Section 4 notifications were issued to acquire the land of the villages covered in the impugned notifications for the public purpose in favour of the POSCO Company to establish its Steel Plant in the

acquired land. The case of the petitioners is that the acquisition of land in the name of POSCO through the Corporation is not permissible in law as the acquisition of land is in favour of a Private Company. Therefore, the acquisition of land must be made by the State Government by following the procedure contemplated in Part VII of the L.A. Act. It is further stated that the waiver of statutory right of the land owners u/s 5(A) of the L.A. Act by the State Government by resorting to emergency provision of Section 17(4) of the L.A. Act is a colourable and mala fide exercise of power by the State Government there being no emergency as provided in Section 17(2) in respect of the acquisition of land in favour of POSCO Company for the establishment of proposed Steel Plant. Therefore, it is stated that exercising the power by the State Government waiving the statutory right u/s 5A of the Act is bad in law and publishing section 4(1) read with Section 17(4) notifications without there being an order of the State Government to invoke emergency clause is a gross and patent violation of the fundamental and statutory rights guaranteed to the petitioners and other land owners under Articles 14, 19 and 21 and Constitutional right guaranteed under Article 300A of the Constitution of India. It is further stated that there has been no emergency of the nature mentioned in Section 17(2) which is evident from the latest status report posted in the official website of District Jagatsinghpur which indicates that notwithstanding the issue of impugned notice u/s 4(1) of the Act, subsequent progress of the acquisition work has been held up as agitations are not allowing entry of any revenue personnel into the concerned area in connection with land acquisition work.

5. It is further stated that the impugned land acquisition proceedings have been initiated through the opposite party no.3, which describes itself as "Nodal Agency" for land acquisition in its website.

6. It is stated that the Corporation is not competent to acquire the lands exclusively for any particular Company and could only under certain circumstances, acquire land for an "industrial estate" or an "industrial area" as defined in Orissa Industrial Infrastructure Development Corporation Act, 1980 (hereinafter called in short "IDCO Act"). It is stated that the impugned notifications u/s 6 were published beyond one year from the date of publication of notification u/s 4(1) in respect of the land covered under Annexure-2 series. The date of publication of Section 4 notifications and date of publication of notifications u/s 6 and date of awards passed are clearly described in the table furnished by the petitioners" counsel during the course of argument for better appreciation of the case which is as under:

- A
- B
- C
- D

E

F

G

H

I

J

K

L

SI No.

Notification on Sec. 4 of L.A. Act read with S. 17(1) & 17(4) of L.A. Act.

Mouza

Notification No.

Date

Gazette Notification Date

U/ s. 6

L. A. A ct

Notification No.

Date of Declaration beyond one yr. of S. 4(1) Notification-Gross Violation of S. 6(1) proviso

(ii)-

See col. F

Date of notification

S. 9 Notice (no service of notice)

Date of award u/s 11 is beyond two years from the date of declaration u/s. 6 and hit by S. 11(1) -See Col. I

1

4

Bayan ala Kand ha

51323

28.12.05

2.1.2006

6

41533

17.10.07

21.11.07

No notice

Beyond Two years

2

4

Bhuya n-pala

51337

28.12.05

2.1.2006

6

44682

13.11.07

22.11.07

No notice

Beyond Two years

3

4

Nuaga on

51344

28.12.05

2.1.2006

6

44726

13.11.07

22.11.07

No notice

Beyond Two years

4

4

NoliaSahi

51351

28.12.05

2.1.2006

6

45278

16.11.07

22.11.07

No notice

Beyond Two years

5

4

Polanga

51330

28.12.05

2.1.2006

6

45318

16.11.07

22.11.07

No notice

Beyond Two years

6

4

Gobinda

307

4.1.06

16.3.2006

6

45324

16.11.07

22.11.07

No notice

Beyond Two

-pur

years

7

4

Dhinkia

315

4.1.06

16.3.2006

6

45330

16.11.07

22.11.07

No notice

Beyond Two years

7. It is stated that no notice u/s 9 was issued and served upon the petitioners and other land owners before passing awards by determining the market value of their acquired land and that the awards have been passed beyond the period of two years. Further, there is no approval of the awards passed by the Land Acquisition Officer by the State Government which is required under the first proviso to Section 11 of the Act. Therefore, the impugned awards passed are void ab initio and they are not legal and valid. It is stated that the land acquisition is for POSCO Private Limited Company, a wholly owned subsidiary of Pohang Steel Company located in South Korea and has no shareholder who is a citizen of India. All the shares except one are held by the foreign company and the one share is held by a Korean national. Amount more than the amount payable by POSCO India (P) Ltd. towards compensation and administrative charges is paid by them to the Corporation. In this regard, additional affidavit is

filed by the petitioners on 22.7.2011 read with paragraphs 9.1 and 9.2 of the counter affidavit of the Corporation wherein it has addressed letters to the Collector stating that the land has been selected by them whereas Memorandum of Understanding entered with the State Government and the POSCO, it has selected the sites which is stated in the counter affidavit filed on behalf of opposite party nos. 1,2 and 5. The Memorandum of Understanding has lapsed. It stipulates "transfer" of land acquired to the Company as per the counter affidavit filed on behalf of opposite party nos. 1, 2 and 5. The acquisition of land comprised in seven villages are meant for a Private Limited Company through Corporation which is acting as an intermediary. The entire cost of acquisition is borne by the Private Limited Company. It is further stated that Section 3(f) sub clause (iv) of the L.A. Act expressly excludes "acquisition of land for Companies" from the definition of "public purpose" in the Act. The acquisition for companies is governed by Part VII of the L.A. Act read with Companies (Land Acquisition) Rules, 1963 and not by Part II of the L.A. Act. The acquisition of land in favour of a Private Limited Company is subject to procedure prescribed under Part VII and the aforesaid Rules. Section 44B of L.A. Act limits the acquisition of land in favour of a Private Company for the purpose of erection of dwelling-houses for workmen of the company as provided u/s 40(1)(a). Acquisition of land for establishment of Steel Plant does not come within the purview of the aforesaid provision of the Act. Therefore, the acquisition of land by the State Government under Part II of the L.A. Act at the instance of the Corporation is without jurisdiction and is ab initio void and non-est in the eye of law. Passing the awards without obtaining approval from the State Government first as required under proviso to Section 11 of the L.A. Act is also equally illegal and the acquisition proceedings are void ab initio in law.

8. Mr. J.Das, learned Senior Counsel has placed strong reliance upon the decision of the Supreme Court in the case of Devinder Singh and Others Vs. State of Punjab and Others, wherein the Apex Court has held that for acquisition of private land in favour of a company following the procedure as provided under Part VII of the L.A. Act and the Companies (Land Acquisition) Rules, 1963 is mandatory. It is stated that the Corporation cannot cause land acquisition for itself. Learned Senior Counsel placed strong reliance upon the objects/Reasons/ Preamble of the OIIDCO Act, 1980, and Sections 2(h), 2(i) defining "Industrial Area" and "Industrial Estate" respectively and Sections 14, 15 and 31. The Corporation is not acquiring land for any "industrial area" or "industrial estate". No notification is available for establishment of any "industrial estate" as provided u/s 14(ii)(a). The Corporation could only cause acquisition of land for an "industrial area" or "industrial estate" and not solely and exclusively for a Private Limited Company at the cost of such a Company. Therefore, the State Government has not followed the procedure as provided under Part VII of the Act and the Rules referred to supra though they are mandatory. Acquisition of land for a Private Limited Company at its own cost can only be done under Part VII of the L.A. Act and not under Part-II of the Act. The notifications u/s 4 being

vitiated, exercise of power under Sections 6 and 11 are also void ab initio in law. Therefore the same are liable to be quashed.

9. Resort to Section 17(4) of the L.A. Act without any legitimate reasons for invoking emergency clause waiving Section 5A right of the petitioners and other land owners is bad in law. Section 5A partakes the character of a fundamental right guaranteed to the land owners under Articles 14, 19(i) (g) and 21 of the Constitution of India and is an unavoidable ingredient of the mandatory requirement of natural justice. Waiver of Section 5A right of the land owners by the State Government through arbitrary exercise of power and resort to Section 17(4) is manifestly illegal and unconstitutional. In support of this legal contention, Mr. Das has placed reliance upon the decisions of the Supreme Court in the case of Babu Ram and Another Vs. State of Haryana and Another, , Dev Sharan and Others Vs. State of U.P. and Others, and Sri Radhy Shyam (Dead) through L.Rs. and Others Vs. State of U.P. and Others,

10. Further it is contended that there is contradictory and inconsistent stand of the State Government and Corporation with regard to mentioning of the reason both u/s 4(1) notifications and Section 6 notifications. In Section 4(1) notifications it is expressly mentioned that the acquisition of land is for M/s. POSCO Company whereas notifications u/s 6 indicate that the acquisition is for an industrial undertaking of OIIDCO i.e. proposed Steel Plant of M/s. POSCO. Both the said notifications indicate that they are not for "public purpose" and that the acquisition of land in question is at Government expense whereas in reality the acquisition of land is for Private Limited Company at its own cost. Therefore the acquisition of land should not be undertaken under Part II of L.A. Act but under Part VII and would be limited to the prescriptions as provided u/s 40(1)(a) as stated u/s 44B of the L.A. Act.

11. Learned Senior Counsel on behalf of the petitioners and some land owners of the villages in question has placed strong reliance upon some decisions regarding locus standi of the petitioners for filing this writ petition and contended that the writ petition is not adversary in nature but it is a public interest petition representing the cause of large number of semi-educated, marginal/small land owners who are ignorant of the intricacies of the Constitution of India, the provisions of L.A. Act and the Companies Act. It is further stated that they are being illegally deprived of their property in violation of their fundamental rights and other statutory rights. Therefore, the writ petition is maintainable as "class action" litigation. The decisions relied upon by the learned counsel for the petitioners are :(i) S.P. Gupta Vs. President of India and Others, ; (ii) People's Union for Democratic Rights and Others Vs. Union of India (UOI) and Others, ; (iii) Chaitanya Kumar and Others Vs. State of Karnataka and Others, (iv) Guruvayur Devaswom Managing Commit. and Another Vs. C.K. Rajan and Others, (v) Ashok Lanka and Another Vs. Rishi Dixit and Others, and (vi) Indian Bank Vs. Godhara Nagrik Co-operative Credit Society Ltd. & Anr., (2008) 12 SCC 541.

12. Regarding delay and laches, it is stated that there is no delay and laches in filing this petition. The information posted in the website of the Collector, Jagatsinghpur District, indicates that nothing has proceeded beyond notifications u/s 4(1) of the L.A.Act. No land owners have been dispossessed of their agricultural or homestead land. There is no delay and laches in this case in view of the written statement of opposite party no. 2, Collector, Jagatsinghpur which indicates that nothing is proceeded beyond notifications u/s 4(1) of the L.A. Act and the land owners have not been dispossessed. The entire process of acquisition of land in question from the very inception are ab initio void. It is a clear case of continuing wrong and the process of land acquisition has not been completed. The writ petition involves fundamental rights and the statutory rights, the same cannot be waived by the State Government though no emergency to acquire the land is made out. In this regard, he has relied upon the decisions of the Supreme Court in the case of Bandhua Mukti Morcha Vs. Union of India (UOI) and Others, and Delhi Jal Board Vrs. National Campaign - CA No. 5322 of 2011 disposed of on..... Reliance has also been placed upon the decisions of the Supreme Court in the case of Northern Indian Glass Industries Vs. Jaswant Singh and Others, Municipal Corporation of Greater Bombay Vs. The Industrial Development Investment Co. Pvt Ltd., and others, and Hari Singh and Others Vs. State of U.P. and Others, The decision upon which reliance has been placed by learned Senior Counsel on behalf of the Corporation namely, Pratibha Nema and Others Vs. State of M.P. and Others, is not a case for acquisition exclusively and solely for a private limited company and it is for establishment of a "diamond park". This decision has no application to the present case. Another decision relied upon is Nand Kishore Gupta & Ors. Vs. State of U.P. & Ors., reported in (2010)10 SCC 292 which is the case of Yamuna Express way project under implementation under public private partnership model, acquisition under U.P. Industrial Area Development Act, 1976 to be owned by the public corporation. Therefore, it is not a case of acquisition of land solely for a Private Limited Company and it is not one where power of eminent domain had been utilized by the State Government for a purpose set down in Section 40(i)(a) of (Part VII of L.A.Act). Therefore, it has been held in that case on facts that it is not a case where the power of acquisition was exercised by the State Government for the work or project of a Company. Therefore, both the decisions referred to above have no application to the fact situation. It is further contended that the petitioners have made out a prima facie case for grant of interim prayer in view of the fact that the acquisition proceedings from the inception till the date of passing awards is void ab initio in law and there is blatant violation of the fundamental and statutory rights of the land owners and the balance of convenience is in their favour. Hence, they are entitled for the interim prayers sought for in the miscellaneous application referred to supra.

13. Objection to the Misc. Case has been filed on behalf of opposite party nos. 1,2 and 5 by way of counter affidavit being sworn to by one Syed Nayar Ahmed, Addl. Secretary to Government of Orissa, Revenue and Disaster Management

Department, Orissa Secretariat, Bhubaneswar, Dist. Khurda inter alia traversing the averments in the writ petition as well as misc. petition contending that the same are not maintainable either in fact or in law as the petitioners have no locus standi to file this writ petition either personally or in the representative capacity as they have not disclosed in the writ petition any fact leading to prove the right either under the Constitution or under any statutory Act. They have also not disclosed the identity of the persons whom they claim to represent in this writ application. Therefore, in the absence of any such material particulars, the Misc. Case is liable to be dismissed in limini with cost.

14. It is also contended that the self same petitioners have filed another writ application bearing W.P.(C) No. 14885 of 2011 claiming that they are "other traditional forest dwellers" as defined in Section 2(o) of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 whereas in the present writ petition, they have claimed both as individuals and members of the community of village Gobindpur and are exercising their rights under the Scheduled Tribes and other Traditional Forest Dwellers(Recognition of Forest Rights) Act, 2006 which are mutually contradictory and self-destructive inasmuch as both the assumptions cannot be true at the same point of time and for that reason alone, it is stated that the writ petition is liable to be dismissed. They have claimed that they are the owners and persons interested in the acquisition of their respective piece of land and that they depend on their land for their livelihood and shall be deprived of the same by the impugned acquisition of land which stand of them is contradictory and inconsistent with each other.

15. Further it is stated that the writ petition is also liable to be dismissed for delay and laches inasmuch as the petitioners themselves have admitted that the notifications u/s 4(1) of the Land Acquisition Act were issued way back in January, 2006. They did not challenge the said notifications for more than five years which shows their acquiescence in land acquisition and opportunism of the petitioners is abundantly clear from the averments made in the writ petition and the misc. case, the same amounts to abuse of the process of law as the self same petitioners claiming to be traditional forest dwellers/representatives of traditional forest dwellers have challenged in W.P.(C) No. 14885 of 2011, the decision of the Government of India in granting the clearance by the Ministry of Environment and Forest, wherein the Government of India diverted Ac. 1253.225 hectares of forest land in favour of M/s. POSCO by order dated 2.5.2011. It is further stated that the writ petition is also liable to be dismissed as both the writ as well as the misc. case suffers from suppression of material facts and particulars, incorrect representation of facts are made which are contradictory to each other for which the writ petition is not maintainable and liable to be dismissed.

16. The averments made in paragraph-3 of the misc. case and the contentions raised are untenable, misconceived and liable to be rejected. Further, it is stated that the acquisition of land is made by the State Government under L.A.Act,

1894 on the application of the IDCO u/s 31 of the Orissa Industrial Infrastructure Development Corporation Act, 1980 and such acquisition is for public purpose within the meaning of Section 3 clause (f) & sub-clause (iv) of the L.A. Act. The background of such acquisition of land for public purpose is enshrined in the Industrial Policy, 2001 of the State Government for the purpose of transforming Orissa into a vibrant Industrial State creating a business climate conducive to accelerate investment in industry and infrastructure projects, raising income, employment, economic growth in the State and reducing regional disparities in economic development. The project has got the approval of State Government under the provision of the Orissa Industries (Facilitation) Act, 2004 (hereinafter called in short "OIF Act"). IPICOL has appraised the Steel Project and recommended to the State Government for entering into Memorandum of Understanding. High Level Clearance Authority (HCLA) under the provisions of OIF Act has approved the Steel Project on 17.6.2005. Pursuant to approval by HCLA, MoU between the Government of Orissa and M/s. POSCO for establishment of Integrated Steel Plant of 12 MT capacity at Paradeep has been signed on 22.6.2005 which document is produced at Annexure-A/1.

17. The State Government following due procedure under the L.A. Act, 1894 have proceeded with publishing Sections 4(1), 6(1) notifications and issued order u/s 7 of the L.A. Act. The allegation of the petitioners that exercise of power by the State Government is a mala fide and colourable one is denied as wholly untenable in law. It is urged on behalf of the Company that the declaration notifications of the Government u/s 6(1) of the L.A. Act that the acquisition is made for a public purpose is not open to challenge in view of the Section 6(3) of the Act which states that declaration of the Government shall be conclusive evidence that the land is needed for a public purpose of the IDCO which in turn will lease out the same in favour of the Company.

18. It is further stated that by resorting to Section 17(4) and waiving the right u/s 5A of the Act, the State Government has not committed any illegality under the law as the purpose of emergency has been to welcome largest Foreign Direct Investment (FDI) in the State with a view to uplift the socio economic condition of the people through industrialization and providing employment opportunities.

19. The Corporation has filed requisition with the District Collector of Jagatsinghpur District for acquisition of private land measuring Ac. 437.69 comprising in seven villages in the district of Jagatsinghpur mentioned in Annexure C/1 series by addressing letters dated 7.10.2005, 18.10.2005 and 20.10.2005. The Collector was also requested to initiate the land acquisition proceedings under the emergency provision of L.A. Act, 1894, so as to make the land available at the earliest possible time for the purpose mentioned therein. The declaration notifications published u/s 6(1) of L.A. Act and order u/s 7 have been issued vide notifications dated 16.11.2007 and 7.1.2008 respectively wherein it is specifically mentioned that land is required for a public purpose i.e. IDCO for establishment of Steel Plant. The above notifications show that the land

is being acquired for a public purpose and not for a private company. Declaration notifications published u/s 6 of the Act has been made under Annexure D/1 series in respect of the seven villages. The averments made in paragraphs 4, 5 and 6 of the Misc. Case have been denied as not correct. The contentions raised by the petitioners in the writ petition are termed as misconceived and untenable in law and cannot be accepted by this Court. Further it is stated that it is not a fact that the land has been acquired for a private limited company but has been acquired for IDCO for public purpose for establishment of industries under the IDCO Act, 1980 particularly Sections 15, 31 to achieve the laudable objective of the said Act for securing the orderly establishment of industries, the provisions of the Orissa Industries (Facilitation) Act, 2004 read with Land Acquisition Act, 1894. It is not a fact that the land acquisition work has been held up which has been falsely averred by the petitioners. In fact Section 4(1) notifications read with Section 17(4) have already been issued and declaration notification u/s 6 and order u/s 7 of the Act have already been made and awards u/s 11 of the Act have already been passed and payment of compensation has been started. It is further stated that from the following facts, it would be evident that in the present case, land acquisition is made for public purpose.

(a) all requisitions for the land covered under the notifications referred to above have been filed by opp. party no.3(IDCO) which is a Statutory Corporation owned by the State Government;

(b) all payments at various stages of land acquisition have been made to the District Collector by IDCO.

(c) Notifications u/s 6 and orders u/s 7 referred to above would clearly indicate that the land is being acquired for IDCO.

(d) The lease agreements which have to be executed between the Collector of the District and the requisitioning authority of the land acquisition will be executed with IDCO making IDCO a lessee of the Government for the land in question.

(e) Possession of the land will also be given by the Collector to IDCO.

20. Further it is contended that Section 3(f)(iv) of the Land Acquisition Act defines that "public purpose" includes acquisition of land for a Corporation owned or controlled by the State. The IDCO Act has received the assent of President of India. Section 31 of the said Act states that whenever any land is required by the Corporation for any purpose in furtherance of the objects of the Act and the Corporation is unable to acquire it by agreement, the State Government may upon an application of the Corporation in that behalf, order proceedings to be taken under the L.A. Act, 1894 for acquiring the same on behalf of the Corporation as if such lands were needed for public purpose within the meaning of Act.

The beneficial implication of the projects is as under: -

- (a) Growth in development of rail and road infrastructure which will benefit other areas;
- (b) Substantial gain of revenue for the Central and State Governments;
- (c) Generation of large scale employment; and
- (d) Meeting partially the Steel demand in the country.

21. Considering the above factors, the State Government felt that the project would be in the larger interest of the State. Therefore, the State Government approved the proposal and executed an MOU with M/s. POSCO India Private Limited. It is further submitted that the National Council of Applied Economics and Research (NCAER) which is an autonomous institution and widely respected in the field of Applied Economics & Research has conducted a Social cost benefit analysis of the POSCO Steel Project in Orissa.

22. The salient features of the Project are quoted hereunder for appreciation of this Court.

(i) These multipliers imply that POSCO's iron ore project would create an additional employment of 50,000 person annually for the next 30 years. This translates into Rs. 20 billion of additional output for Orissa. In terms of value addition, the iron ore project would contribute 1.3 percent to Orissa's State Gross Domestic Product by 2016-17.

(ii) On the other hand, if POSCO puts up the Steel Project to utilize the entire iron ore mined in the State, the impact on the economy would be much greater- 8,70,000 persons for 30 years for additional employment each year over the next 30 years. This translates into Rs. 298 billion of additional output for Orissa. In terms of value addition, the Steel project would contribute 11.5 percent to Orissa's SGDP by 2016-17.

(iii) POSCO India's project if set up in an SEZ area will contribute a cumulative tax revenue(indirect taxes on domestic sales and capital goods, corporate tax etc.) of Rs. 174.970 crore, in nominal terms, to the State Government of Orissa) and the Government of India over the useful life of thirty five operating years as per report of the Economic Law Practice Firm Das and Associates prepared for NCAER, the Government of Orissa cumulative share would be Rs. 77,870 crore on account of VAT inflow on domestic sales and the share accruing to the State Government from the Government of India on the tax revenue collected from the Project.

Therefore, it is submitted that the Project would have more beneficial purpose and the same is obviously for public interest although the project is being set up by a Private Limited Company through IDCO. If the generation of additional employment of 8,70,000 persons for 30 years and contribution in terms of value addition of 11.5 percent to the State Domestic Product(SDP) of the State apart from the huge revenue for the State and the Central Governments do not serve

public purpose or interest, one would be at a loss to understand what constitutes public purpose or interest.

23. On the similar lines, Corporation has also filed affidavit. Further affidavit on behalf of opposite party nos. 1,2 and 5 has been filed in reply to the additional affidavits filed on behalf of the petitioners dated 25.5.2011 and 30.5.2011 traversing the averments and legal contentions. On the similar line, objection on behalf of the opposite party no.3 has been filed by way of affidavit. Counter affidavit to the additional affidavit filed by the petitioners being sworn to by Miss. Madhuri Mishra, Land Officer of Orissa Industrial Infrastructure Development Corporation has also been filed. More or less, similar contentions as have been urged by opposite party nos. 1,2 and 5 have been urged justifying the acquisition of land and leasing the same in favour of the M/s. POSCO.

24. Preliminary counter has been filed on behalf of opposite party no. 3 on 24.5.2011 seeking to justify issuance of the impugned notifications u/s 4(1) read with Section 17(4) of the L.A. Act more or less on the similar ground urged by opposite party nos. 1,2 and 5. It is further stated that declaration notification u/s 6 of the L.A. Act has been made in respect of land village-wise as mentioned in Section 4(1) notifications read with Section 17(4) of the L.A. Act. Declaration notifications were made u/s 6 of the L.A. Act on 17.10.2007, 13.11.2007 and 16.11.2007 under Annexure-C/3 series. It is further stated that awards have been made since long and payment of compensation has already started. In support of the same he has produced Annexure-F/3 series. Further it is stated that the land has been acquired by the State Government at the instance of the Corporation for the Company for establishment and promotion of industries in the State which is for a public purpose. In fact, vide letter dated 5.11.2005 under Annexure D/3 the Collector & District Magistrate, Jagatsinghpur has requested the Corporation to deposit a sum of Rs. 63,63,856/- to expedite the proposal for Section 4(1) notification @ 10% of the approximate compensation amount as establishment cost and other charges. Accordingly, the IDCO deposited the entire establishment cost to expedite the matter. Subsequently, the IDCO in its letter dated 28.10.2009 placed funds amounting to Rs. 11,21,36,684/- with the Special Land Acquisition Officer, Jagatsinghpur towards payment of compensation to the land owners in respect of village Bayanalkandha, Noliasahi, Polanga, Bhuyanpal, Nuagaon, Gobindapur and Dinkia in the district of Jagatsinghpur. The money deposited by the IDCO is public money and the payment of compensation by the Land Acquisition Officer is made out of Government fund vide letter dated 28.10.2009 under Annexure E/3. Further the allegation of violation of the fundamental rights guaranteed under Articles 14, 19, 21 and constitutional right under Article 300A of the Constitution of India to land owners is denied as wholly untenable in law. It is further reiterated that notifications under Sections 4(1) and 6 of the Act are lawful and they are correct in the eye of law.

25. Opposite party no.4-the beneficiary Company has also filed objection on 24.5.2011 to the Misc. Case filed by the petitioners justifying the acquisition

proceedings leasing the land in its favour urging the same contention as has been urged by opposite party-State Government and its officials and the IDCO.

26. Mr. Asok Mohanty, learned Advocate General and Mr. Jagannath Patnaik, learned Senior Advocate contended that the writ petitioners have no locus standi to file this writ petition as the petitioner no.1 and 5 are claiming that they are representing the land owners. They are filing the writ petition on their behalf which is not permissible in law. Learned Senior Counsel rebutted the legal contention urged on behalf of the petitioners that they have got locus standi to take up the cause of the other land owners stating that they have no access to justice as they are illiterate people. Therefore, they contended that the writ petition is liable to be dismissed on the ground that the petitioners have no locus standi. In so far as other petitioners are concerned, they have not produced any documents to show that they have acquired ownership right of the land acquired. Therefore, they have also no locus standi to file the writ petition challenging the acquisition proceedings. They further contended that there is delay and laches in challenging the acquisition proceedings and therefore, the writ petition is liable to be rejected. In support of their legal contention, they have placed reliance upon the decisions of the Supreme Court in the case of Northern Indian Glass Industries Vs. Jaswant Singh and Others, and Municipal Corporation of Greater Bombay Vs. The Industrial Development Investment Co. Pvt Ltd., and others, . Mr. Jagannath Patnaik, learned Senior Counsel placed reliance upon a decision of the Supreme Court in the case of Pratibha Nema and Others Vs. State of M.P. and Others, in support of justification of acquisition of land for POSCO. In that case land was acquired under the L.A. Act by the State Government for public purpose and placed at the disposal of Industries Development Corporation which leased out the same to a Company in private sector for establishment of Diamond cutting and polishing unit. The Company deposited certain amount with the Corporation. The said amount was in turn made available to the Land Acquisition Collector towards compensation to be paid to the persons from whom land was acquired. No part of compensation amount for acquisition was paid out of public revenue. In such a case, whether there is sufficient compliance of second proviso to Section 6(1) was examined and answered in favour of the State. The Apex Court in the above referred case has held that once the amount paid by the company to the Corporation was found to be the advance premium for the lease, it would become the fund of the said Corporation, even if it be on a rough and ready basis and such fund when utilized for payment of compensation, wholly or in part, would satisfy the requirements of the second proviso to Section 6(1) read with Explanation 2. The same is held to be legal and valid. In support of the same legal contention regarding acquisition of huge land under Land Acquisition Act by State for construction of express highway and development of township work proposed to be get done through third party on BOT basis, contractor selected by tender process is held to be legal and valid. The Apex Court has further held that acquisition of land for public purpose or for company under Sections 4, 39, 40 and 41 of L.A. Act cannot be said to be case of a

colourable exercise of power. Therefore, learned Senior Counsel Mr. Patnaik placing reliance upon the provisions of Sections 3(f)(iv), 4(1) and 17 of the L.A. Act and Section 17(4) waiving Section 5A right of the land owners to acquire land submits that the acquisition of land in favour of the Corporation which in turn leasing the land in favour of M/s. POSCO for establishment of integrated Steel Plant is permissible in law in view of the observations made by the Apex Court in the above cases. It is further submitted that dispensation of enquiry to be conducted by the Collector by invoking emergency clause of Section 17(2) of the L.A. Act has been held to be justified in the case referred to supra.

27. With reference to the aforesaid rival legal contentions urged on behalf of the parties, the following points would arise for consideration by this Court in the Misc. Case.

(i) Whether the writ petition filed by the petitioners on their behalf & on behalf of the other land owners whose lands are covered in the impugned notifications in representative capacity claiming that it is a public interest & class action litigation is maintainable in law ?

(ii) Whether the petitioners have made out a prima facie case for grant of interim prayer and are entitled for the interim relief as prayed for in the Misc. Case ?

(iii) What order ?

Point Nos. 1 & 2:

28. Both the points are interrelated and therefore, the same are answered together.

29. We have carefully examined the rival legal contentions urged on behalf of the parties with reference to the aforesaid points framed by us and after perusing the documents and records produced before us, we are of the view that the said points are required to be answered in favour of the petitioners for the following reasons.

30. To maintain this writ petition, learned Senior Counsel, Mr. Jayant Das has rightly placed reliance upon the decisions of the Supreme Court in the case of S.P. Gupta Vs. President of India and Others, ; People's Union for Democratic Rights and Others Vs. Union of India (UOI) and Others, ; Chaitanya Kumar and Others Vs. State of Karnataka and Others, Guruvayur Devaswom Managing Commit. and Another Vs. C.K. Rajan and Others, Ashok Lanka and Another Vs. Rishi Dixit and Others, and Indian Bank Vrs. Godhara Nagrik Co-operative Credit Society Ltd. & Anr., reported in (2008)12 SCC 541. While considering the Misc. Case, there is no need for us to extract the relevant paragraphs of the aforesaid judgments in this order in view of the clear legal proposition of law laid down by the Supreme Court in the aforesaid cases regarding the filing of the writ petition as class action on behalf of the land losers/owners, except certain relevant paragraphs of the decision of the Supreme Court in the case of Guruvayoor Devaswom Managing Committee (supra), wherein a three Judge Bench of the

Hon"ble Supreme Court after referring to its earlier Constitution Bench and other large number of decisions held as under:

50. The principles evolved by this Court in this behalf may be suitably summarized as under:

(i) The Court in exercise of powers under Article 32 and Article 226 of the Constitution of India can entertain a petition filed by any

interested person in the welfare of the people who is in a disadvantaged position and, thus, not in a position to knock the doors of the Court.

The Court is constitutionally bound to protect the fundamental rights of such disadvantaged people so as to direct the State to fulfil its constitutional promises. (See S.P. Gupta v. Union of India, 1981 Supp. SCC 87, People's Union for Democratic Rights and Others Vs. Union of India (UOI) and Others, Bandhua Mukti Morcha Vs. Union of India (UOI) and Others, and Janata Dal Vs. H.S. Chowdhary and Others,

(ii) Issues of public importance, enforcement of fundamental rights of a large number of the public vis-a-vis the constitutional duties and functions of the State, if raised, the Court treats a letter or a telegram as a public interest litigation upon relaxing procedural laws as also the law relating to pleadings. (See Charles Sobraj Vs. Supdt. Central Jail, Tihar, New Delhi, and Hussainara Khatoon and Others Vs. Home Secretary, State of Bihar, Patna,

(iii) Whenever injustice is meted out to a large number of people, the Court will not hesitate in stepping in. Articles 14 and 21 of the Constitution of India as well as the International Conventions on Human Rights provide for reasonable and fair trial.

(iv) The common rule of locus standi is relaxed so as to enable the Court to look into the grievances complained on behalf of the poor, the deprived (sic), the illiterate and the disabled who cannot vindicate the legal wrong or legal injury caused to them for any violation of any constitutional or legal right. [See Fertilizer Corpn. Kamgar Union (Regd.) v. Union of India, S.P. Gupta, People's Union for Democratic Rights, D.C. Wadhwa (Dr) v. State of Bihar and BALCO Employees' Union (Regd.) v. Union of India.]

(v) When the Court is prima facie satisfied about violation of any constitutional right of a group of people belonging to the disadvantaged category, it may not allow the State or the Government from raising the question as to the maintainability of the petition.

(See: Bandhua Mukti Morcha.)

(vi) Although procedural laws apply to PIL cases but the question as to whether the principles of res judicata or principles analogous thereto would apply depends on the nature of the petition as also facts and circumstances of the case. [See Rural Litigation and Entitlement Kendra v. State of U.P. and Forward Construction

Co. v. Prabhat Mandal (Regd.).]

(vii) The dispute between two warring groups purely in the realm of private law would not be allowed to be agitated as a public interest litigation. (See *Ramsharan Autyanuprasi v. Union of India.*)

(viii) However, in an appropriate case, although the petitioner might have moved a court in his private interest and for redressal of personal grievances, the Court in furtherance of the public interest may treat it necessary to enquire into the state of affairs of the subject of litigation in the interest of justice. (See *Shivajirao Nilangekar Patil v. Dr Mahesh Madhav Gosavi.*)

(ix) The Court in special situations may appoint a Commission, or other bodies for the purpose of investigating into the allegations and finding out facts. It may also direct management of a public institution taken over by such Committee. (See *Bandhua Mukti Morcha, Rakesh Chandra Narayan v. State of Bihar and A.P. Pollution Control Board v. Prof. M. V. Nayudu.*)

In *Sachidanand Pandey v. State of W.B.* this Court held: (SCC pp. 334-35, para 61)

61. It is only when courts are apprised of gross violation of fundamental rights by a group or a class action or when basic human rights are invaded or when there are complaints of such acts as shock the judicial conscience that the courts, especially this Court, should leave aside procedural shackles and hear such petitions and extend its jurisdiction under all available provisions for remedying the hardships and miseries of the needy, the underdog and the neglected. I will be second to none in extending help when such help is required. But this does not mean that the doors of this Court are always open for anyone to walk in. It is necessary to have some self-imposed restraint on public interest litigants.

31. In the case of *State of Uttaranchal Vs. Balwant Singh Chauhan and Others*, the Supreme Court examined various facets of public interest litigation in the backdrop of criticism from within and outside the system and made lucid analysis of the concept and development of public interest litigation in the following three phases:

Phase I.--It deals with cases of this Court where directions and orders were passed primarily to protect fundamental rights under Article 21 of the marginalised groups and sections of the society who because of extreme poverty, illiteracy and ignorance cannot approach this Court or the High Courts.

Phase II.--It deals with the cases relating to protection, preservation of ecology, environment, forests, marine life, wildlife, mountains, rivers, historical monuments, etc. etc.

Phase III.--It deals with the directions issued by the Courts in maintaining the probity, transparency and integrity in governance."

While dealing with the first phase of development, the Court referred to large number of precedents and recorded its conclusion in the following words:

We would not like to overburden the judgment by multiplying these cases, but a brief resume of these cases demonstrates that in order to preserve and protect the fundamental rights of marginalised, deprived and poor sections of the society, the courts relaxed the traditional rule of locus standi and broadened the definition of aggrieved persons and gave directions and orders. We would like to term cases of this period where the Court relaxed the rule of locus standi as the first phase of the public interest litigation. The Supreme Court and the High Courts earned great respect and acquired great credibility in the eyes of public because of their innovative efforts to protect and preserve the fundamental rights of people belonging to the poor and marginalised sections of the society.

32. Petitioner Nos. 2, 3, 4 and 6 claim to be land losers. Petitioner no. 1 and 5 claim to represent other land losers who have not approached this Court as "class action" litigation; thus the writ petition on behalf of such land losers is maintainable. Having regard to the undisputed facts and circumstances of the case, prima facie we feel that the acquisition proceedings which have been initiated by the State Government on the basis of MOU entered into by it with the POSCO (opposite party no.4) for establishment of 12 MT integrated Steel Plant in the State of Orissa at Paradeep in the district of Jagatsinghpur and also to lease out the same to the POSCO through IDCO are bad in law. Pursuant to the MOU entered into between POSCO and the State Government, the State Government as per Clause-5 of the MOU is to acquire 20 to 25 acres of land for establishment of official headquarters of the Company in Bhubaneswar and approximately 4000 acres of land for the purpose of setting up of the Steel Project and associated facilities including the port facilities and a storage yard for coking coal and 2000 acres of land for township development, recreational activities and all related social infrastructure development collectively, the "Integrated Township Development". Out of this approximately 1500 acres would be identified adjacent/near to the Steel Project and another 500 acres near the Mining Project. The Government of Orissa State also agreed to acquire and transfer all the above mentioned land required for the overall Project, free from all encumbrances through Orissa Industrial Infrastructure Development Corporation on payment of the cost of the land. In view of the aforesaid agreement made between the State Government and the Company, the acquisition of land in favour of the POSCO through the IDCO as lessor is an undisputed fact and the facts pleaded in this case by the opposite parties that 10% of compensation amount i.e. Rs. 63,63,856/- has been deposited with the Corporation and further sum of Rs. 11,21,36,684/- has been deposited towards the cost of acquisition would clearly go to show that the acquisition of land is in favour of the POSCO, the beneficiary for establishment of Steel Plant as agreed upon with the State Government under the MOU. Further the impugned notifications published u/s 4(1) read with Section 17(4) and Section 6(1) of the L.A. Act would clearly show that the acquisition of land is for the purpose of private company M/s. POSCO

and the requisition letter under Annexure-D/3 series made with the District Collector produced by the Corporation would clearly show that acquisition of land is for the purpose of establishment of industries, which in fact is not correct is evident from the letter dated 21.9.2005 written by the Deputy Managing Director, POSCO India Private Limited to the Chairman-cum-Managing Director, IDCO, Bhubaneswar with subject "submission of proposal for alienation of Government land for construction of proposed 12 MTA Integrated Steel Plant at Paradeep" after referring letters dated 16.7.2005 & 13.8.2005 and IDCO's letter dated 2.9.2005 and letter dated 12.9.2005 wherein it has been mentioned at paragraph-1 that on behalf of POSCO-India " I thank you for all your support extended to me and to my colleague towards the setting up of the POSCO-India project and we look forward to your invaluable support in making the project a reality." After these letters and correspondences, IDCO sent requisition letters dated 18/20.10.2005 which are produced by the Corporation mentioning that different extent of land is required to be acquired by it in different villages and other series of letters under Annexure-II series for establishment of industries. Section 4(1) notifications read with Section 17(4) of the Act would clearly go to show that the acquisition is not for the establishment of industries, but for particular company i.e. POSCO which is evident from Clause-5 of the MOU entered into with the State Government by the Company which is not permissible u/s 3(f)(iv) of the L.A. Act read with Section 31 of the IDCO Act as contended by the opposite parties. Therefore, acquisition of land not following the procedure laid down under Part VII of the L.A. Act & Rules referred to supra in favour of Company prima facie is not tenable in law.

33. The legal questions that are raised by the petitioners are required to be considered and answered at the time of disposal of the writ petition on merits. Therefore, we may have to state in this order at this stage while considering the interim prayer sought for by the petitioners that taking into consideration the extent of the land of the illiterate persons who are unable to approach this Court on account of illiteracy, poverty and related problems which have been confronting them, the writ petition on behalf of other land owners/losers is maintainable in law as class action litigation as held by the Apex Court in a catena of cases referred to supra.

34. Further regarding delay and laches in filing this writ petition also, learned Senior Counsel placed reliance on the dates given by the petitioners in the chart which is extracted in this order in respect of Sections 4(1) & 6 notifications published in the official Gazette which are beyond the statutory period prescribed under the provisions of Section 6 of the Act. Mr. Sanjit Mohanty, learned Senior Counsel for opp. party no.4 placed strong reliance upon the public notice referred to u/s 4(1) of the Act published in respect of the village of the petitioners dated 29.11.1006 and 25.11.2006 and submitted that the first date of declaration notification issued u/s 6(1) of the Act being 16.11.2007, the statutory requirement of issuance of declaration notifications u/s 6(1) of the Act was published within the statutory period stipulated in the said provisions. If the

above notices issued by the Collector to the land owners/public as contended by the learned Senior Counsel on behalf of POSCO are taken into consideration, declaration notifications published u/s 6(1) are valid in law. This factual and legal contention urged on behalf of the parties is also required to be examined on merits by this Court with reference to the provisions of the L.A. Act and the law laid down by the Apex Court in this regard. But the fact remains that the contention urged on behalf of the Senior Counsel Mr. Jayant Das giving particulars that the publication of the notifications in the Official Gazette u/s 6(1) is beyond one year from the date of publication of preliminary notifications u/s 4(1) read with Section 17(4) of the L.A. Act is required to be carefully examined by this Court. Further, possession of land has not been taken from the land losers/owners of the villages referred to supra is evident from not producing Section 16(1) notifications by the State Government and its officers. Further it is stated that the entire process from the very inception of land acquisition proceedings prima facie became void-ab-initio for the reason that undisputedly the acquisition of land is for a private Company for establishment of a Steel Plant. Therefore, it cannot be said that this acquisition is for public purpose in terms of definition u/s 3(f) sub-clause (iv) of the L.A. Act merely because requisition is made in favour of the Corporation as provided u/s 31 of the IDCO Act. But on the other hand, letter correspondences made between the State Government and the Company and Company and Corporation would prima facie show that the acquisition of land is not in favour of Corporation for establishment of industries as contended by it. The requisition by the Corporation represented by its Managing Director to the District Collector of Jagatsinghpur is in favour of the POSCO Company is evident from the letter correspondence and there is a specific mention in this regard in the Sections 4(1) and 6 notifications and also money was deposited by the Company with the Corporation which in turn has deposited the same with the District Collector towards the acquisition of land as required u/s 6 of the L.A. Act.. Therefore, it is contended by the petitioners that the case of the opposite parties that the acquisition proceedings were initiated stating that the same was for public purpose is factually not a correct fact. Section 3 clause (f) sub-clause (iv) of the L.A. Act, expressly excludes "acquisition for Companies" from the definition of "public purpose" under the Act. In view of the above definition clause prima facie we cannot accept at this stage that the acquisition of land in favour of Corporation is for public purpose and acquisition is in favour of the Company is prima facie evident from the impugned notifications and other documents referred to supra which is in contravention of Section 40 (i)(a) read with Section 44B of the L.A. Act. If the acquisition of land is made in favour of the Company as defined u/s 3(e) of the Act, the procedure required u/s 39 of the Act read with Rules 4, 5 and 6 of the Rules shall be complied with. That has not been done. Therefore, the contention on behalf of the petitioners that the acquisition proceedings from the inception till the conclusion are void ab initio is required to be examined. Further placing reliance upon the following two decisions of the Supreme Court in the case of Bandhua Mukti Morcha Vs. Union of India (UOI) and Others, and Delhi Jal Board

Vs. National Campaign (C.A No. 5322 of 2011), it is urged that it is a case of continuing wrong and the process of land acquisition has not been completed as per the information posted by the District Collector in the website and not producing Section 16(1) notifications to evidence the factum of taking over possession of land from the land owners. Therefore, the writ petition involves fundamental and statutory rights of the land losers/owners, which cannot be waived on the technical ground of delay and laches as contended by the opposite parties Senior Counsel. Further reliance placed by the learned Senior Counsel on behalf of the Corporation upon the decision of the Supreme Court in the case of Pratibha Nema and Others Vs. State of M.P. and Others, has no application to the fact situation as the proceedings in this case prima facie shown at this stage is void ab-initio and therefore it is contended that the delay and laches shall not come in the way of this Court to exercise its discretionary power to undo the injustice caused to the land owners and examine their fundamental and statutory rights. The above rival legal contentions urged on behalf of the parties are required to be examined in detail with reference to the provisions of L.A. Act and IDCO Act and the records in relation to the acquisition proceedings. The State Government, the Collector and the Land Acquisition Officer have not produced any material to show prima facie that the possession of the acquired land has been taken over from the land owners and notifications u/s 16 of the L.A. Act has been published to evidence the fact of taking over possession from the land owners by the State Government and that acquired land has vested with it, and thereafter it has transferred the same to the Corporation which in turn has handed over possession of the said land to the POSCO by executing lease deed in its favour. Therefore, the contention that is urged on behalf of the opposite parties that the writ petition suffers from delay and laches and therefore it has to be thrown away at this stage cannot be accepted at this stage, having regard to the undisputed fact that the writ petition is maintainable and the same cannot be rejected on the ground of delay and laches. The notification u/s 4(1) read with Section 17(4) waiving of Section 5A statutory right of the land owners is an undisputed fact.

35. Section 17(4) notifications could not have been issued in the instant case merely because requisition is made by the Corporation for acquisition of land for establishment of Industrial Estate to establish industries prima facie for the reason that acquisition of land in fact is in favour of a Private Company, and the State Government has not resorted to the procedure as contemplated under Part VII of the L.A. Act namely, obtaining prior approval of the Government and following the mandatory procedure as provided under Rules 4, 5 & 6 of Companies (Land Acquisition) Rules, 1963, which are required to be strictly adhered to for the purpose of acquisition of land in favour of a private Company. Section 44-B provides that notwithstanding anything contained in this Act, no land shall be acquired under Part VII, except for the purpose mentioned in clause (a) of sub-section (1) of Section 40 for a private company which is not a Government Company.

36. In the instant case the acquisition of land of Ac.4000 is for establishment of a Steel Plant by a private Company POSCO. The acquisition of land other than for the purpose mentioned in Section 44-B prima facie is not permissible in law. Apart from the said reasoning, Section 17(4) of the L.A. Act could not have been invoked by the State Government in the facts of the case unless there was emergency as stipulated u/s 17(2) of the Act. Section 17(2) of the Act can be taken aid of by the State Government only for the specified purpose, namely, whenever owing to any sudden change in the channel of any navigable river or other unforeseen emergency, it becomes necessary for any Railway administration to acquire the immediate possession of any land for the maintenance of their traffic or for the purpose of making thereon a river-side or ghat station, or of providing convenient connection with or access to any such station or the appropriate Government considers it necessary to acquire the immediate possession of any land for the purpose of maintaining any structure or system pertaining to irrigation, water supply, drainage, road communication or electricity, the Collector may immediately after the publication of the notice mentioned in sub-section(1) and with the previous sanction of the appropriate Government enter upon and take possession of such land which shall thereupon vest absolutely in the Government free from all encumbrances. Therefore, the issuance of notifications under Sections 4(1) read with section 17(4) prima facie having regard to the undisputed fact that the acquisition of land is for establishment of a Steel Plant by M/s. POSCO is not permissible in law. Dispensing with the provision of Section 5A for conducting an enquiry by giving reasonable opportunity to the land losers is a clear case of negation of a very valuable statutory right and Constitutional right as held by the Apex Court in a catena of cases thereby it has deprived them of their valuable fundamental rights to carry on with agricultural occupation guaranteed under Article 19(i)(g) which is interrelated to Article 21 of the Constitution by arbitrarily acquiring their agricultural land under the guise of public purpose by issuing Section 6 notifications. No material documents are produced by the State Government to show that there was emergency to acquire the land in question and it is permissible as provided u/s 17(2) and to justify the issuance and publication of the notifications under Sections 4(1) read with Section 17(4) to waive the statutory right of the land owners.

37. In this regard, reliance has been placed by the learned Senior Counsel for the petitioners upon the decision of the Supreme Court in the case of Devinder Singh and Others Vs. State of Punjab and Others, , in which case it has been held that for the purpose of acquisition of private land for a company, the procedure as provided under Part-VII of the L.A. Act and the Companies (Land Acquisition) Rules, 1963 are required to be followed as they are mandatory in nature. Further it is stated that the Corporation could not have sent requisition to the District Collector to acquire the lands for itself though its purpose is to form an industrial estate. On a reading of the objects and reasons of the preamble of the OIIDCO Act, 1980 and definition of "Industrial Area" and "Industrial Estate"

as in Sections 2(h) and 2(i) and provisions of Sections 14, 15 and 31 of the OIIDCO Act, 1980, it appears that the Corporation has not acquired the land for any "industrial area" or "industrial estate" as defined in Section 2(h), 2(i) of the OIIDCO Act. No notification is published covering the acquired land for any industrial area to establish industrial estate as required u/s 14(ii)(a) of the IDCO Act. The IDCO can only cause acquisition of land for an "industrial area" in which area "industrial estate" can be established and not solely and exclusively for a Private Limited Company at the cost of such a Company. Prima facie the Notifications u/s 4(1) read with Section 17(4) of the L.A. Act being fatally vitiated and ab initio void, the exercise of power by State Government u/s 6 and the alleged awards u/s 11 are also ab initio void and non est as stated by the petitioners as the same was done beyond one year is evident from the documents Annexure F-3 series produced by the Corporation. As could be seen from the notices u/s 9 and 10 to pass awards which are produced, same were issued on 8.5.2008, but awards were passed on 3.8.2008. This would further clearly go to show that awards were passed without serving notices upon the land owners. The same should have been maintained in the normal course after issuing notices to the land owners, hearing them and determining the market value of their acquired property. This procedure is not followed by the State-opposite parties. The copies of awards passed and produced by the Corporation do not instill confidence in the mind of the Court that the same are passed in the normal course by following the mandatory procedure. The market value has not been correctly determined on the basis of either capitalization or sale statistics method. Apart from the said reasoning, there is nothing on record to show that notices to pass awards were served upon the land owners and the awards were approved by the State Government as required under the first proviso to Section 11 of the L.A. Act. Section 11 proviso clearly states that no award shall be made by the Collector under sub-section (i) without the previous approval of the appropriate Government or of such officer as the appropriate Government may authorize in this behalf. Second proviso of Section 11 provides that it shall be competent for the appropriate Government to direct that the Collector may make such award without such approval in such class of cases as the appropriate Government may specify in this behalf. Therefore, undisputedly, there is no previous approval or post facto approval of the State Government in so far as awards are concerned upon which strong reliance is placed by the learned Senior Counsel on behalf of the opposite parties to contend that the acquisition proceedings were concluded way back in the year 2008. The award notices were also not communicated u/s 12(2) to the land owners and no documentary evidence is produced in this regard. After three years the petitioners are approaching this Court which is barred by delay and laches which contention prima facie, is not tenable in law in view of the decisions of the apex Court referred to supra.

38. The argument advanced by Mr. Sanjit Mohanty, learned Senior Advocate is that the final notifications are all within one year from the last dates of

publication of notifications being hereinafter referred to as the date of the publication of the notifications of Section 4(1) of the Act for the purpose of computation of one year as provided u/s 6(1) for issuing declaration notifications. If that interpretation is given, then publication of notifications in the official Gazette will have no consequences at all for the purpose of issuing declaration notifications u/s 6 of the L.A. Act. If such argument is accepted, requirement of simultaneous publication both in the official Gazette and in two daily newspapers circulating in that locality as per Section 4(1) of the L.A. Act, 1894 and giving of public notice of substance of such notification by the Collector would be meaningless. That must be simultaneous or within the reasonable period, but not after the lapse of six months from the date of Gazette Notifications. If such belated notices are taken for the purpose of computation of limitation as provided to declare the Section 6 notifications, the object and purpose of stipulation of limitation in the above provision can be frustrated. The acquisition authority published such notification for the purpose of computing one year. This aspect of the matter prima facie cannot be accepted in these proceedings at this stage. Therefore, if the dates given in the chart by the petitioners' counsel is taken into consideration, prima facie it would reveal that the Section 6 notifications are beyond the period of one year.

39. In view of the aforesaid observation we have to hold prima facie that the awards are not the awards in the eye of law. Further in view of Section 11-A of the Act, the Collector shall make an award u/s 11 within a period of two years from the date of publication of the declaration notification u/s 6 of the L.A. Act and if no such awards are passed as per Section 11 of the Act, the proceedings for the acquisition of the land shall lapse. This aspect of the matter is also required to be examined. The various vital aspects which have been referred to supra as contended by the learned Senior Counsel appearing for the petitioners and opposite parties are required to be considered at the time of hearing on merits.

40. For the foregoing reasons we are of the view that petitioners have made out a very strong prima facie case for grant of the interim prayer and that the balance of convenience is in their favour and if the interim order is not passed, greater hardship would be caused to them. Prima facie, there is violation of their fundamental, constitutional and statutory rights which are infringed.

41. Hence, we are of the prima facie view that the reliefs sought for by the petitioners in the aforesaid Misc. Case referred to supra have to be granted. We accordingly direct that status quo as on today in respect of the private lands in question of the concerned villages as per Annexure-2 series be maintained till disposal of the writ petition.