

(2012) 09 CHH CK 0034
In the Chhattisgarh High Court
Case No : Writ Petition (C) No. 279 of 2012

Radheshyam and Others

APPELLANT

Vs

State of C.G. and Others

RESPONDENT

Date of Decision : 04-09-2012

Acts Referred:

Constitution of India, 1950 — Article 13(2), 14, 19, 19(1), 226
Land Acquisition Act, 1894 — Section 17, 23, 24, 3(c), 3(ee)

Citation : (2012) 3 CG.L.R.W. 13 : (2012) 4 CGBCLJ 289

Hon'ble Judges : Prashant Kumar Mishra, J

Bench : Division Bench

Advocate : Hamida Siddiqui in W.P. C Nos. 396, 680 85 698 of 2012, Mr. Harsh Vardhan in W.P. C 279/2012 and Mr. Sanjay Kumar in W.P. C No. 781 8 and 888 of 2011 85 W.P. C 374 8b 561 of 2012, for the Appellant; Kishore Bhaduri, Additional Advocate General for the Respondent State, Shri Vivek Shrivastava for the Union of India in W.P. (C) Nos. 781 and 888 of 2011, Shri B.P. Sharma, Shri Vivek Chopda, Shri M.L. Sakat, Shri Sameer Uraon, for Respondent No. 8, M/s. Visa Power Limited in W.P. (C) Nos. 396, 680 8s 698 of 2012 and Respondent No. 10, M/s. S.K.S. Power Generation (Chhattisgarh) Limited in W.P.C. No. 279/12, Shri Ashish Shrivastava, for Respondent No. 10, Wardha Power Plant Ltd in W.P. (C) Nos. 781 8 and 888 of 2011, Shri V.V.S. Murthy with Shri Pankaj Shrivastava and Shri Avinash Kumar Mishra, for Respondent No. 9, Environment Conservation Board in W.P. (C) No. 279/2012, Shri P.S. Koshy and Shri Kasif Shakeel, for Respondent CSIDC in W.P. (C) Nos. 781 8 and 888 of 2011, Shri Sumesh Bajaj, for the Respondent CSIDC in W.P. (C). Nos. in W.P. (C) No. 374, 561 8 and 279 of 2012, Shri Ayaz Naved, for the respondent CSIDC in W.P. (C) Nos. 396, 680 8 and 698 of 2012 and Shri Sanjay S. Agrawal and Shri Mateen Siddiqui, for Respondent No. 8, M/s. M.B. (Moser Baer) Power Chhattisgarh Limited in W.P. (C) No. 374 8 and 561 of 2012, for the Respondent

Final Decision : Allowed

Judgement

Prashant Kumar Mishra, J.—These 8 writ petitions have been preferred by the respective petitioners/land holders challenging the land acquisition proceedings initiated by the State Government/respective land acquisition officers in the

District of Janjgir-Champa and Raigarh. In all the writ petitions, acquisition of land is being made on the "request of General Manager, District Trade and Industries Center and thereafter the land has been handed over/proposed to be handed over to the Chhattisgarh State Industrial Development Corporation (for brevity "CSIDC), who in turn has executed or will execute lease in favour of the Respondent-Private Power Companies. The following are subject matters in each of the case:

(I) W.P. (C). No. 279/2012 has been preferred by 29 villagers of village Binjkot, Tehsil Kharsia, District Raigarh, a Scheduled Area under Fifth Schedule of the Constitution of India, challenging the land acquisition proceedings involving construction of power plant by Respondent No. 10 SKS Power Generation Chhattisgarh Limited.

(II) In W.P. (C). No. 396/2012 the villagers of village Banhar, Tehsil and District Raigarh have challenged the land acquisition proceedings involving the power plant of Respondent No. 8 M/s. Visa Power Limited.

(III) In W.P. (C). No. 680/2012 the villagers of village Dumarpali, Tehsil and District Raigarh have challenged the Land Acquisition Proceedings involving the proposed power plant of Respondent No. 8 M/s. Visa Power Limited.

(IV) In W.P. (C). No. 698/2012, the villagers of village Dumarpali, Tehsil and District Raigarh, have challenged the acquisition proceedings involving the proposed power plant of Respondent No. 8 Visa Power Limited.

(V) In W.P. (C). No. 781/2011 & W.P. (C). No. 888/2011, the petitioners have challenged the notifications u/ss. 4 & 6 of the Land Acquisition Act, 1894 (hereinafter referred to as "the Act, 94") which was issued for acquiring land for Respondent No. 10 M/s. Wardha Power Limited by showing the purpose as "Industrial Purpose". However, in Para 9.7 of the writ petition, it is alleged by the Petitioner that the acquisition is for construction of Private Railway Line of Respondent No. 10 Company at its own cost. Similar acquisition for a Private Company for construction of Railway Siding has already been quashed by this Court in the matter of Gaukaran Singh and Others Vs. State of Chhattisgarh and Others, .

(VI) In W.P. (C). No. 374/2012 8b W.P. (C). 561/2012, the petitioners have challenged the notifications under Sections 4, 85, 6 of the Act, 1894 as also for quashing the award dated 06.07.2011 and 11.05.2011 respectively. In both the cases, the acquisition proceedings have been initiated by mentioning "public purpose" in the notification "for establishment of 1320 M.W. Power Plant" which is to be established by Respondent No. 8 M/s. M.B. (Moser Baer) Power Chhattisgarh Limited, a Private Power Company.

2. Since the grounds of challenge are almost similar, overlapping and inter mixed, this Court is proceeding to decide all the cases by this common judgment. The main ground of challenge as urged in the writ petitions and argued by Miss

Hamida Siddiqui, Mr. Sanjay Kumar and Mr. Harshvardhan, learned counsel for the petitioners are as follows:

(a) The petitioners have not been afforded right of hearing as envisaged u/s. 5-A of the Act and this has vitiated the subsequent land acquisition proceedings.

(b) The Land Acquisition Officer-cum-Sub-Divisional Officer was not empowered to hear the objections filed u/s. 5-A of the Act and it was beyond its authority to decide the objections.

(c) The appropriate government has neither applied its mind nor recorded its satisfaction as to the existence of a public purpose before taking a decision to publish the notification u/s. 6 of the Act.

(d) The impugned land acquisition proceedings are not an acquisition for a public purpose but for a Company in each of the case, hence is classical example of colourable exercise of power, fraud on the statute and sheer abuse of power of "eminent domain".

(e) The acquisition for a Company can be made only under the provision contained in section 40(1)(a) read with Section 44-B of the Act and in no other way, therefore, the acquisition proceeding for the benefit of Private Power Company is bad in law.

(f) Prime agricultural land cannot be acquired for the industrial purpose for the ultimate benefit of a power company depriving the agriculturists of their means of livelihood.

(g) In the districts of Janjgir-Champa and Raigarh, heavy concentration of thermal power plants have taken place and the respondent Governments have permitted establishment of such power plants without examining the over all impact of Thermal emission and fly ash generation to the environment which is an essential part of assessment of public purpose, therefore, if a plant is damaging the environment, it cannot achieve any public purpose.

(h) The acquisition of land in Fifth Schedule area is in violation of provisions of Panchayat (Extension to Schedule Areas) Act, 1996

3. Shri Kishore Bhaduri, learned Advocate General appearing for the State; Shri Jayant Bhushan learned senior counsel appearing for Respondent-SKS Power; Shri B.P. Sharma, learned counsel for VISA Power; Shri Ashish Shrivastava, learned counsel for Wardha Power Company; Shri Martin Siddiqui for M.B. (Moser Baer) Chhattisgarh Power Company; Shri P. Sam Koshy, Shri Sumesh Bajaj and Shri Kasif Shakeel for the respondent CSIDC and Shri V.V.S. Murthy, Sr. Advocate for Chhattisgarh Environment Conservation Board have resisted the writ petition by raising following arguments that:

(a) The newly formed State of Chhattisgarh in furtherance of its Industrial Policy and for making the State a power hub has entered into MoU with different Companies for establishment of power plants and thus the acquisition is for the

benefit of the State and is for a public purpose.

(b) The Private Power Company shall make available 7.5% of power so generated to the State Government at variable cost which shall be used for the benefit of consumers of the State, therefore, the establishment of Power Plant is for the benefit of the State and is a public purpose.

(c) The State will retain the ownership of land and the power utilities shall be granted lease of the land, therefore, the acquisition is for the State and not for the benefit of Private Power Companies.

(d) The Sub-Divisional Officer-cum-Land Acquisition Officer in each of the case is competent to initiate the land acquisition proceedings and decide the objections and the procedure prescribed under the Land Acquisition Act has been followed. The acquisition is made after paying enhanced compensation under the State Rehabilitation Policy and the State Government shall adhere to its policy, therefore, the power of eminent domain is exercised in accordance with law and in just and reasonable manner.

(e) There delay and laches in approaching the Court inasmuch as in some of the cases much area has already been acquired and objection was not raised in the first round of acquisition proceedings and in some other writ petitions, challenge has been made after passing of the award and thus the writ petitions are not entertainable.

4. The matters were heard in two batches. In the course of arguments, the papers annexed to Writ Petition (C) No. 279/2012 were referred, therefore, this Court shall take up W.P. (C). No. 279/2012 of the first batch of writ petitions as the lead case and proceed to decide the issues which are common in all the writ petitions. In this writ petition, notifications issued u/s. 4856 of the Act, 1894 as well as the entire Land Acquisition Proceeding has been challenged on the ground mentioned in the preceding paragraph. The land involved in this writ petition is situated at village Binjkot, Tehsil Kharsia, District Raigarh, an area predominantly inhabited by tribal community and a scheduled area as declared under Article 244(1) read with Fifth Schedule of the Constitution of India. The writ petition is preferred by 29 villagers, many of them are scheduled tribes. The land is sought to be acquired for a projected industrial purpose without naming respondent No. 10 M/s. S.K.S. Power Generation (Chhattisgarh) Ltd., (Henceforth "SKS Power") who is the ultimate beneficiary of the acquisition. The grounds specific to each of the writ petition shall be taken up for consideration subsequently and the grounds common to all the writ petitions will be taken up at the first stage.

Whether the acquisition is for a Private Company or for a public purpose and whether the acquisition is malafide being in colourable exercise of power and fraud on the statute and in sheer abuse of power of eminent domain ?

5. It has been contended by learned counsel for the petitioner that the land is in fact acquired for the benefit of respondent No. 10 SKS Power for establishment

of 1320 M.W. Power Plant and the mention of the purpose in the notification u/s. 4 & 6 of the Act as "industrial purpose" is a camouflage only for invoking the power of "eminent domain". He would submit that the State is not using a single penny either in establishment of plant or for acquisition of land, therefore, there is no public purpose and the acquisition is bad in law. It has also been urged that the land has been identified by respondent No. 10 Power Company way back in 2008 and the entire survey, project report etc., have been prepared more than 3 years before the initiation of acquisition proceeding, therefore, there is no such industrial purpose which has necessitated the acquisition but is an acquisition for the Respondent No. 10 Company for which land has been identified after preparation of project report. The judgment of the Supreme Court in case of Pratibha Nema and Others Vs. State of M.P. and Others, and the Single Bench Judgment of this Court rendered in Khileshwar Prasad Jaiswal v. State of Chhattisgarh passed in W.P. (C) No. 1075/2011 are distinguishable and not applicable in the facts of the present case.

6. Learned counsel for the respondents have argued that the State has entered into an MoU with respondent No. 10 Company in furtherance of its industrial policy and in the said MoU the State is under obligation to provide assistance to the Company and otherwise also establishment of power plant in the State would augment the industrial activity; 7.5% of power generated from the plant shall be made available to the State at variable cost; the ownership of land would remain with the State Government and Respondent No. 10 Power Company would only be granted lease of land and not absolute ownership, therefore, the subject acquisition is for a public purpose. It has also been argued that the State through its instrumentality, Chhattisgarh State Industrial Development Corporation (in short "CSIDC") would lease out the land after receipt of premium and would also receive yearly lease rent from the power Company which demonstrate that the ownership shall remain with the State and thus the acquisition is for public purpose and not for a private Company. Reliance has been placed on various decision of the Supreme Court including Pratibha Nema (supra). They have also relied on a single Bench decision of this Court in Khileshwar Prasad Jaiswal (supra), which has been affirmed in W.A. and SLP against the said judgment has also been dismissed in limine by the Supreme Court.

7. In the return filed by Respondent No. 10, copy of the minutes of Energy Department of Government of Chhattisgarh held on 26.03.2008 is available at Page No. 80. Item No. 16 of the Agenda taken up in the meeting concerns the proposed power plant of Respondent No. 10. It is mentioned therein that in accordance with the department's consent dated 28.03.2007, respondent No. 10 has identified 1250 acres of land at village Kurubhata, Badejampali, Darramuda and Binjkot in Raigarh District for establishment of its power plant in furtherance of MoU dated 24.01.2007. Other issues concerning high concentration slurry disposal system, water allotment etc., have also been taken up for consideration. However, the decision relevant for this writ petition which was "taken in the said meeting was with regard to selection of village Binjkot for establishment of the

power plant way back in 2007-2008. Even though land was already identified in January/March 2007 as mentioned earlier, the MoU between the State and Respondent No. 10 executed on 07th January, 2008 states that the Company shall identify suitable land in Chhattisgarh State and carry out necessary survey for availability of land for the power plant. The MoU says that the primary responsibility for development of the project shall be of the Company. However, the Government through the Chhattisgarh State Investment Promotion Board (for short "CSIPB") will facilitate the project development activities by extending cooperation to the Company. It is further provided therein that 5% of the net power generated by the project will be provided to the Government or its nominated Agency at energy (variable) charges and if the Company is allocated Captive Coal Block also in the State of Chhattisgarh for supply of coal to the project, then the Company will provide on an annualize basis to the Government or its nominated agency, 7-5% of the net power generated by the project at the energy (variable) charge. The Company thereafter executed implementation agreement on 01.08.2009 and in Para 4.2.3 thereof it is mentioned that the company shall at its own cost and expense identify the land required for the project and the Government will assist in acquisition of private lands as may be required by the Company for construction, operation and maintenance of the project and further that the Company shall also be allowed to acquire such land through direct negotiation with the owners in accordance with the prevailing laws, rules and regulations in the State. In case the land is owned by the Government, it will be leased out to the "Company as per the applicable laws and policies, however, all the preliminary work to effect such lease shall be done by the Company at its own cost. Thus, under the MoU and agreement between the State and Respondent No. 10, the land was to be identified by the Company and thereafter the State would assist in acquisition, cost thereof is to be borne by the Company. The land was in fact identified in the year 2007-08 i.e., much before the land acquisition process was commenced by the State Government. Thus the land has not been identified by the State Government but by the Company itself and it appears from the record of the Land Acquisition Proceeding that the request for acquisition of said land by projecting it to be required for industrial purpose was made by the General Manager, District Trade and Industries Center (for short "DTIC").

8. From the record of CSIDC, it appears that Respondent No. 10 initially moved an application for acquiring the land on 31.08.2007 on which it was informed to move application before the Chhattisgarh State Industrial Promotion Board (CSIPB) and thereafter CSIPB granted in-principle approval for acquisition which finds mention in the note sheet of CSIDC dated 12.03.2008. In the note sheet of 02.06.2008, it is mentioned that villagers objected to the proposed acquisition on the ground that forged agreement and consent of villagers have been submitted by the Company. The General Manager, DTIC by its letter dated 30.7.2008 informed the CSIDC that for acquiring land in 3 villages for the power plant of Respondent No. 10, total compensation of Rs. 12.31 crores approximately and

service charges of Rs. 60.88 lakhs approximately are needed for distribution of compensation "land Respondent No. 10 Company was accordingly informed. The CSIDC thus issued a letter to Respondent No. 10 on 02.08.2008 as mentioned in the note sheet and thereafter the note sheet of 19.08.2008 records that respondent No. 10 Company deposited Rs. 13 crores with the CSIDC towards payment of compensation. This amount was deposited in the bank account of CSIDC on 22.08.2008 and on the same date, CSIDC issued Cheque of Rs. 12.92 crores approximately in the name of Land Acquisition Officer, Raigarh to be deposited through G.M., DTIC as mentioned in the note sheet dated 22nd August, 2008. At all relevant places the note sheet mentions that the land is to be acquired for Respondent No. 10 SKS Power and it nowhere records that the amount is deposited towards advance lease premium or yearly lease rent.

9. Respondent No. 10 SKS Power in fact wrote a letter to the MD, CSIDC on 08.08.2007 which is part of record of CSIDC, mentioning that as far as possible, they wanted to go for private purchase of land, however, since major part of land belongs to tribes or State Government, private purchase may not be possible in law, therefore, after deliberations with the local authorities, the Company has decided to approach the State Government for land acquisition. According to the Company, the State has assured allocation of 750 hectares of land but the Company has plans for expansion in future, therefore, it needs at least 1062 acres of land available in the villages and thus they have applied for acquisition of lands situated at villages Bade Jampali, Darramuda, Binjkot with all relevant details. The Department of Commerce and Industries, Government of Chhattisgarh by its communication ""Mated 29.02.2008 addressed to the Commissionerate of Industries granted approval for acquisition of 258.521 hectares of private land situated in the above named three villages for establishment of power plant of SKS Ispat and Power Limited. The villagers immediately started objecting to the acquisition and such early objection made in the year 2008 is available in the records of CSIDC. The receipt of deposit of Rs. 13 crores by the Company with CSIDC mentions that "the payment is towards land acquisition". The letter issued by the CSIDC on 26.8.2008 along-with Cheque for compensation amounting to Rs. 12.92 crores specifically mentions that the acquisition is for the power project of Respondent No. 10 Company. When the draft notification u/s. 4(1) was prepared by the SDO (Revenue), Kharsia, respondent no. 10 sought modification by mentioning that the company has deposited an amount of compensation of Rs. 12.92 crores approximately for acquiring 258.521 hectares but the proposed notification is for 248.843 hectares, thus there is difference of 9.678 hectares which needs to be corrected. This letter clearly suggests that the industrial purpose mentioned in the notification is the establishment of power plant for the Company and not for any other purpose. This is the back ground and preliminary preparation for the acquisition of land for the so called public purpose i.e., industrial purpose as mentioned in the notification u/s. 4 & 6 of the Act, 1894.

10. The procedure adopted by the Company in association or assistance with

CSIPB, CSIDC, DTIC and the Land Acquisition Officer is more or less similar in all the cases where the land is to be acquired for the benefit of private power company by mentioning the public purpose as industrial purpose. The issue as to whether the acquisition is for industrial purpose or for a company and further as to whether the public purpose can be achieved even when the land is acquired for a private company is the core issue to be decided in the above stated factual back-ground and the state of record as mentioned in the preceding paragraphs.

11. In several judgments of Supreme Court, the right or power of a sovereign State to appropriate the private property called as power of "eminent domain" has been explained. Eminent domain is right or power of a sovereign State to appropriate private property within the territorial sovereignty to public use or purpose. It is an exercise of strong arm of the Government to take property for public use without the owners consent. It requires no constitutional recognition; it is an attribute of sovereignty and essential to the sovereign government (Words and Phrases Permanent Edition Volume 14,1952, West Publishing Company). The power of "eminent domain" being inherent in the Government is exercisable in the public interest, general welfare and for public purpose. Acquisition of private property by the State in the public interest or for public purpose is nothing but an enforcement of right of "eminent domain". In India, the Act provides directly for acquisition of particular property for public purpose. It is trite that land Acquisition Act is an expropriator legislation as held in Hindustan Petroleum Corporation Ltd. Vs. Darius Shapur Chenai and Others, The expropriatory legislation as is well known must be strictly construed. When the properties of a citizen are being compulsorily acquired by State in exercise of its power of "eminent domain", the essential ingredients thereof, namely, existence of a public purpose and payment of compensation are principal requisites therefor.

12. While arguing that the acquisition is for a Company and not for any public purpose, the petitioners have placed reliance on several Supreme Court Judgments and to counter the said argument, respondents have relied upon the decisions in Pratibha Nema (supra) and in the matters of Nand Kishore Gupta and Others Vs. State of U.P. and Others, , R.L. Arora Vs. State of Uttar Pradesh and Others, , Smt. Somavanti and Others Vs. The State of Punjab and Others, , Sooraram Pratap Reddy and Others Vs. District Collector, Ranga Reddy Distt. and Others, , therefore, this Court shall refer to these judgments to consider its applicability in the facts of the case in hand.

13. In Nand Kishore Gupta (supra), the acquisition was for Yamuna Expressway Project to be developed by Yamuna Expressway Industrial Development Authority, constituted under the U.P. Industrial Area Development Act, 1976. The project was for developing eastern side of river Yamuna by construction of six lane express way joining Noida to Agra and also for development of 5 regions along the said express way into a planned industrial development area for residential, industrial, institutional or recreational purpose covering 4 districts

namely Gautam Budh Nagar, Agra, Mathura & Aligarh. The authority invited bids from interested parties for developing six lane express way and the building of the township on Build, Operate and Transfer (for brevity "BOT") model and the work was allotted to the successful bidder namely J.P. Infra Tech, a Company and in this back ground, the challenge was made on the ground that the acquisition is for a Company and not for the State Government undertaking, amongst other grounds. Thus, the facts of the case of Nand Kishore Gupta (supra) is entirely different inasmuch as in the said case, an authority was created under the U.P. Act for Yamuna Express Way Project which was a Government project and the Company was only an agency to execute project on BOT basis.

14. In Pratibha Nema (supra), the acquisition was for bringing into existence a huge industrial complex, housing a good number of diamond cutting and processing units compendiously termed as "diamond park", conceived designed and developed by the State Government through Industrial Development Corporation and the acquisition was not for a particular Company but the proposal of allotment was to 12 different industrial units and in the MoU entered between the Corporation and the Companies, it was clearly stated that the Corporation shall allot the land on lease with further provision that advance lease premium shall be paid by the Company and the original receipt book was placed before the Supreme Court to demonstrate that the money was received from the Company as advance lease premium in terms of the MoU. It was further observed in Paragraph 24 by the Supreme Court that the MoU did not refer to any compensation at all which only referred to payment of advance lease premium.

15. In the case in hand, the project is not conceived, designed and developed by the State or any instrumentality of the State Government nor any tender has been called for handing over the project to a Private Company on BOT basis as was done in case of Nand Kishore Gupta (supra). Similarly, the MoU and the implementation agreement executed between the State and Respondent No. 10 (like MoU/Agreement having been executed with other power Companies also in other writ petitions) nowhere refers that private land acquired by the Government shall be leased out to Respondent No. 10 as was the case before the Supreme Court in Pratibha Nema (supra). Contrary to this the MoU/implementation agreement in the present case specifically says that the lands shall be identified by the Company and the acquisition of private land shall be made by the Government on payment of cost by the Company. The facility of lease is promised to be extended only in case of Government land. Thus the facts of the case before the Supreme Court in Pratibha Nema were altogether different and are clearly distinguishable.

16. Much reliance has been placed by the respondents on a Single Bench Judgment of this Court in the matter of Khilashwar Prasad Jaiswal (supra) and the judgment in writ appeal in the same matter. On a reading of the said judgment, copy of which has been filed as Annexure R-1 with the return of the

State Government, it does not appear that the Court had looked into the record of CSIDC to ascertain as to how the process of acquisition of land began, nor it is clear from the said judgment that the land was identified by the Company itself and the prayer for acquisition was made by the Company like in the present cases. The Single Bench distinguished an earlier single Bench Judgment of this Court in the matter of *Gaukaran Singh v. State of C.G.* and (*supra*) wherein an acquisition for a company for construction of railway line was quashed by this Court and a writ appeal arising therefrom is pending.

17. In the opinion of this Court, since the entire record of CSIDC and the Land Acquisition Officer was not placed before this Court and it is not clear as to the preliminary exercise of identifying the land, payment of amount as compensation and not as advance lease being not available in the said case, the judgment is clearly distinguishable on facts and is of no assistance to the respondents.

18. In *Sooraram Pratap Reddi (supra)*, the Government of Andhra Pradesh sought to acquire a large chunk of land in the name of public purpose for the purported development of finance district and alive projects namely "Information Technology Park". The entire amount of compensation was to be paid by A.P. Industrial Infrastructure Corporation Limited (APIIC) and the information technology park was to be developed by the said APIIC and in the acquired land, it has developed Software Lay Out, Indian School of Business, Indian Institute of Information Technology, High-tech City, National Games Village, Sports Stadia, Integrated International Convention Center, Golf Course, Financial District etc., and some of the projects are developed by the State Government on the basis of Public Private Partnership (PPP) format, the private Company namely Emmar Properties, PJSC Dubai was selected in international competitive bidding for implementation of the project and the Government issued orders approving structure and implementation of the project and collaboration agreement was entered between them. APIIC was having 26% share while Emmar Properties Dubai was having 74% share capital in the joint venture company. This back ground of the matter in case *Sooraram Pratap Reddi (supra)* would demonstrate that the facts of the case were entirely different inasmuch as the project was conceived by the State and the Private Company was only a bidder as one of the joint venture "partners for execution of the project under PPP format. Opposite to this, in the present case, the entire project is conceived and established by Respondent No. 10 Company. The Government is not spending a single rupee in the project. Neither any bidding process is involved nor it is a joint venture project nor executed in PPP format. Therefore, the principles laid down in *Sooraram Pratap Reddi* that "integrated and indivisible joint venture mechanism to tap resources of private sector for infrastructural development for fulfillment of public purpose is permissible" has no application in the facts of the present case where the project is entirely private and there is no iota of government involvement in the project.

19. Since unlike in cases of *Pratibha Nema (supra)*; *Nand Kishore Gupta (supra)*

and Sooraram Pratap Reddi (supra) where the project was envisaged/conceived by the State, to be developed as joint venture or through private participation, the present power project of Respondent No. 10 is purely private, this Court shall now consider the judgment of Supreme Court in the matter of Devinder Singh and Others Vs. State of Punjab and Others, . In the said matter, the Company M/s. International Tractors Limited intended to set up a project namely "Ganesh Project". It requested the State to acquire the lands under the Act 1894 and the State Government issued the notifications. The cultivators/agriculturists whose lands were sought to be acquired challenged the acquisition on the ground that they are dependent on the land under acquisition for earning their livelihood and the acquisition being for a Company, Part-II of the Act 1894 cannot be invoked and the acquisition is in colourable exercise of power. The High Court dismissed the writ petition and the land holders preferred appeal before the Supreme Court. The Supreme Court considered the procedure prescribed in Part-II and Part VII of the Act, 1894 to hold that when the acquisition is for a public purpose, Part-II would apply and where it is at the instance of a Company the procedure to be adopted therefore are laid down in part VII of the Act. Although it may not be decisive but the conduct of the State as to how it intended to deal with such an acquisition is a relevant factor. The action of the State provides for an important condition to consider as to whether the purpose wherever a Company requests it for acquisition of land is a public purpose and/or which could be made at public expense either as a holder or in part where-ever evidently provisions laid down in part II shall be resorted to for acquisition under Part VII. Rules have been made prescribing the mode and manner in which the State vis-?-vis the Company should proceed, it provides for previous consent of the appropriate Government, execution of the agreement, previous enquiry before a consent is accorded, publication of the agreement, restriction on transfer etc., and that no land shall be acquired for a Company except for the purpose contained in Clause (a) of sub-section (1) of Section 40 of the Act. The Supreme Court further considered the Land Acquisition (Companies) Rules 1963 framed by the Central Government u/s. 55 of the Act for acquisition of land for the companies. The following has been discussed in Para 17 of the Judgment:

17. The Land Acquisition (Companies) Rules, 1963 for acquisition of land for the companies have been framed by the Central Government in exercise of its power u/s 55 of the Act. It is not in dispute that the guidelines provided thereunder are followed by the State Government. Concept of constitution of a Land Acquisition Committee appears only from the Companies Rules; no other provision in respect thereof has been made either under the Act or the Rules framed thereunder. A bare perusal of sub-rule (1) of Rule 4 of the said Rules categorically states that the same shall be applicable where acquisition of land is to be made for the company envisaged under Part VII. The State, as indicated hereinbefore, before this Court has categorically stated that advice rendered by a sub-committee of the Land Acquisition Committee had been taken into consideration by it with a view to proceed further in the matter. Rule 4 mandates the appropriate

Government to arrive at a satisfaction in regard to the factors enumerated therein. Rule 4 of the Rules reads as under:

4. Appropriate Government to be satisfied with regard to certain matters before initiating acquisition proceedings. --(1) Whenever a company makes an application to the appropriate Government for acquisition of any land, that Government shall direct the Collector to submit a report to it on the following matters, namely-

(i) that the company has made its best endeavour to find out lands in the locality suitable for the purpose of the acquisition;

(ii) that the company has made all reasonable efforts to get such lands by negotiation with the persons interested therein on payment of reasonable price and such efforts have failed;

(iii) that the land proposed to be acquired is suitable for the purpose;

(iv) that the area of land proposed to be acquired is not excessive;

(v) that the company is in a position to utilise the land expeditiously; and

(vi) where the land proposed to be acquired is good agricultural land, that no alternative suitable site can be found so as to avoid acquisition of that land.

(2) The Collector shall, after giving the company a reasonable opportunity to make any representation in this behalf, hold an enquiry into the matters referred to in sub-rule (1) and while holding such enquiry he shall,--

(i) in any case where the land proposed to be acquired is agricultural land, consult the Senior Agricultural Officer of the district whether or not such land is good agricultural land;

(ii) determine, having regard to the provisions of Sections 23 and 24 of the Act, the approximate amount of compensation likely to be payable in respect of the land which, in the opinion of the Collector, should be acquired for the company; and

(iii) ascertain whether the company offered, (sic) a reasonable price (not being less than the compensation so determined), to the persons interested in the land proposed to be acquired.

Explanation.--For the purpose of this rule "good agricultural land" means any land which, considering the level of agricultural production and the crop pattern of the area in which it is situated, is of average or above average productivity and includes a garden or grove land.

(3) As soon as may be after holding the enquiry under sub-rule (2), the Collector shall submit a report to the appropriate Government and a copy of the same shall be forwarded by that Government to the Committee.

(4) No declaration shall be made by the appropriate Government u/s 6 of the Act unless-

(i) the appropriate Government has consulted the Committee and has considered the report submitted under this rule and the report, if any, submitted u/s 5-A of the Act; and

(ii) the agreement u/s 41 of the Act has been executed by the company.

20. The Supreme Court thereafter considered *Pratibha Nema* (supra) to hold thus in paragraphs 22 to 25:

22. Thus the distinction between public purpose acquisition and Part VII acquisition has got blurred under the impact of judicial interpretation of relevant provisions. The main and perhaps the decisive distinction lies in the fact whether the cost of acquisition comes out of public funds wholly or partly. Here again, even a token or nominal contribution by the Government was held to be sufficient compliance with the second proviso to Section 6 as held in a catena of decisions. The net result is that by contributing even a trifling sum, the character and pattern of acquisition could be changed by the Government. In ultimate analysis, what is considered to be an acquisition for facilitating the setting up of an industry in the private sector could get imbued with the character of public purpose acquisition if only the Government comes forward to sanction the payment of a nominal sum towards compensation. In the present state of law, that seems to be the real position.

Whether the second proviso to Section 6(1) has been complied with.

23. Now, we come back to the facts of the present case and test the validity of acquisition, keeping in view the principles discussed supra. First, we shall address the question argued at length viz. whether there was compliance with the second proviso to Section 6(1). Obviously, if no part of compensation amount is to be paid out of the public revenues, then, the declaration that the land was needed for a public purpose could not have been validly made and the acquisition cannot be considered to be for a public purpose. As already noticed, it was held in *Somawanti* case that the notification u/s 6(1) need not on the face of it contain a recital that the Government had decided to bear a part of the cost of acquisition or it was prepared to make a part of the contribution. Even the absence of budgetary provision shall not affect the validity of the declaration, it was observed. Nevertheless, there should be a definite indication to the effect that the Government is going to bear at least a part of the cost of acquisition. Naturally, the court has to look into the record including pleadings and it is not impermissible to take into account the events prior to and subsequent to the declaration. The High Court in the findings submitted to this Court noted the statement made on behalf of the Government that it was prepared to make necessary budgetary allotment for the amount of compensation payable. However, no record has been produced either before the High Court or before this Court reflecting the Government's decision to meet a part of the expenses of

acquisition. But, that is really immaterial as there is sufficient material to hold that the Nigam which is undisputedly owned and controlled by the State has itself proceeded to make payment of substantial amount towards compensation even at the initial stages in anticipation of the interim award that was made on 7-6-1996. Payment of Rs. 1.5 crores was made by Respondent 6 (Nigam) through the General Manager, District Industries Centre by means of a cheque dated 26-2-1996. This gives an unequivocal pointer that the State-owned Corporation, namely, the Nigam, had to bear the cost of acquisition and as a first step, it made the payment of Rs. 1.5 crores. The assurance on the part of the State Government to sanction the funds would indicate that in case of deficit, the Government is prepared to make the necessary financial provision to enable the Nigam to meet the cost of acquisition. In the document entitled "Industrial Policy and Action Plan, 1994" 4f it is stated at para 7.19 that "the Nigam will work X as the nodal agency for the development of large S and medium industries in the State.

24. According to the appellants, the amount paid by the Nigam to the Land Acquisition Collector was out of the money received from M/s. Arun Kumar International Limited (hereinafter referred to as "AKI Ltd.") towards the advance payment of the compensation amount and it was merely passed on to the Land Acquisition Officer. It is submitted that but for the amount provided by AKI Ltd., no funds were available with the Nigam for making such payment. The sequence of events coupled with the fact that the respondents have not produced the covering letter that would have accompanied the cheque gives rise to a presumption of fact that the cheque issued by the Company towards the compensation amount was simply made over to the Land Acquisition Officer by the Nigam. Therefore, it is stressed that the source of funds was not public revenue, but, it was the private fund of the beneficiary company. On the other hand, it has been the stand of the respondents that the cheque issued by the Company was towards advance lease premium and such payment was made in terms of the memorandum of understanding (MOU). The High Court found sufficient support for the plea taken by the Nigam and the State Government from the documentary evidence viz. the receipt dated 20-2-1996 passed on to AKI Ltd., and the entries in the cash book. In fact, the original receipt book was placed before us in the course of hearing. There is absolutely no basis to infer that the particular receipt was prepared at a later stage after the dispute cropped up. Moreover, the MOU entered into between the Nigam and the two Companies, namely, M/s. B. Arun Kumar Group of Companies and Rosy Blue of Antwerp, Belgium makes it clear that the said Companies were willing to deposit the amount of lease premium with the Nigam in advance. It is made clear in the surrejoinder-affidavit filed in the High Court and it has not been disputed that the Nigam has been vested with the power to allot land to the industrial units, execute lease deeds and charge premium. True, there is nothing on record to show that the lease premium or the advance amount payable was determined by the time the cheque was issued by the Company. The payment of any amount at

that stage on account of lease premium was rather premature, but, the fact remains that under the terms of the MOU the Companies which were parties to the MOU did express their willingness to deposit the amount of lease premium in advance. Viewed from another angle, no interim compensation was determined by the time the payment was made by the Company and there was no reference in the MOU to the compensation amount at all and if so, there is no reason to presume that the amount was deposited by the Company as advance compensation amount. In this state of affairs, the High Court was well justified in relying on the documents/books maintained in the ordinary course of business and recording a conclusion that the cheque for Rs. 3 crores was issued by AKI Ltd., towards advance lease premium. The non-production of the covering letter which according to the sixth respondent is not on its record, does not clinch the issue in favour of the appellants. Taking an overall picture, we are unable to hold that the conclusion of the High Court in this regard is perverse or unsustainable.

25. It seems to be fairly clear, as contended by the learned counsel for the appellants, that the amount paid by the Company was utilized towards payment of a part of interim compensation amount determined by the Land Acquisition Officer on 7-6-1996 and in the absence of this amount, the Nigam was not having sufficient cash balance to make such payment. We may even go to the extent of inferring that in all probability, the Nigam would have advised or persuaded the Company to make advance payment towards lease amount as per the terms of the MOU on a rough-and-ready basis, so that the said amount could be utilized by the Nigam for making payment on account of interim compensation. Therefore, it could have been within the contemplation of both the parties that the amount paid by the Company will go towards the discharge of the obligation of the Nigam to make payment towards interim compensation. Even then, it does not in any way support the appellants' stand that the compensation amount had not come out of public revenues. Once the amount paid towards advance lease premium, maybe on a rough-and-ready basis, is credited to the account of the Nigam, obviously, it becomes the fund of the Nigam. Such fund, when utilized for the purpose of payment of compensation, wholly or in part, satisfies the requirements of the second proviso to Section 6(1) read with Explanation 2. The genesis of the fund is not the determinative factor, but its ownership in praesenti that matters.

The Supreme Court then considered whether the satisfaction of the State Government that the land has been acquired for public purpose is subject to judicial review or not to hold thus in paragraphs 30, 31, 32, and 33.

30. The learned Advocate General appearing for the State of Madhya Pradesh and also for the sixth respondent Corporation (Nigam) countered the above arguments by placing reliance inter alia on the findings of the High Court. He stressed on the policy of the State Government and the genuine effort made by the State Government and its agencies to develop the notified land to facilitate the establishment of diamond-cutting and polishing units with modern

technology. He submitted that public purpose is writ large on the face of the acquisition and the Government is committed to pursue the project in public interest notwithstanding the disinterestedness of the respondent Company owing to the delay that occurred.

31. On a deep consideration of the respective contentions in the light of the documents and events relied upon and the settled principles adverted to supra, we have no doubt in our mind that the acquisition was thought of with the earnest objective to achieve industrial growth of the State in public interest. Quite apart from the view taken by this Court that acquisition in order to enable a company in the private sector to set up an industry could promote public purpose, we have enough material in the instant case to conclude that the proposed acquisition will serve larger public purpose. It is fairly clear that the State's goal to bring into existence a huge industrial complex housing a good number of diamond-cutting and polishing units has led to the present acquisition. Such industrial complex is compendiously termed as "diamond park". The State Government and its agencies including the Nigam acted within the framework of the "Industrial Policy and Action Plan, 1994" in taking the decision to develop a diamond park complex. Para 2.22 of the Industrial Policy specifically states that "the diamond park will be developed in the State for industries based on diamond cutting". Mineral-based industries have been brought within the scope of "thrust sector". Export-oriented units will be specially encouraged, according to the policy. The policy further states that the Nigam will work as a nodal agency for the development of large and medium industries in the State and will play the role of a coordinator for the development of industrial infrastructure in growth sectors in partnership with the private sector and industrialists' associations. The reference to the Industrial Policy is found in the resolution passed at the meeting of the Nigam on 23-11-1995 and the letter of the General Manager, District Industries Centre while forwarding the proposal for acquisition to the District Collector, Indore. The District Collector while seeking the approval of the Commissioner stressed that prestigious exporters from India as well as other foreign countries were likely to establish their units in the diamond park which would generate a good deal of foreign exchange and create employment potential. The State Government by its communication dated 18-1-1996 accorded sanction in principle for acquiring the private land measuring 73 hectares in Rangwasa village "for industrial purpose" in order to set up a diamond park. Thus, the considerations of the Industrial Policy and development weighed prominently with all the authorities concerned while processing the proposals. It is clear from the stand taken by the Nigam in the counter-affidavit and the enquiry report of the Land Acquisition Collector that AKI Ltd. and Rosy Blue of Antwerp are not the only entrepreneurs who would get the land in the proposed diamond park area. In the report of the Land Acquisition Officer, it is specifically mentioned that the land is proposed to be allotted to 12 industrial units after being satisfied about their capacity and bona fides. Our attention has been drawn by the learned Advocate General to the layout plan in which 12 plots

covering an area of 57 hectares are laid out. The remaining area is earmarked for green belt, housing, common facilities and other amenities. Even the MOU entered into between the Nigam and the two Companies does not give us a different picture. It is specifically stated therein that the Commerce and Industries Department will hand over the land to the Nigam for the development of diamond park and the Nigam in its turn will allot the land required for setting up the units for cutting and polishing diamonds on leasehold basis to the two Companies as well as other companies. The site has been selected by a team of government officials after visiting various places. The fact that AKI Ltd. also requested for allotment of suitable land near Indore and ultimately the land close to Indore was selected, does not necessarily mean that the official team was acting at the dictates of the said Company. Having regard to the strategic location and importance of Indore city, the choice of a site near Indore cannot be said to be vitiated by any extraneous considerations. Entering into the MOU with the two Companies and thereafter initiating requisite steps for the acquisition of the land does not, in our view, detract from the public purpose character of acquisition. The MOU, in ultimate analysis, is in the mutual interest of both the parties and was only directed towards the end of setting up of an industrial complex under the name of "diamond park" which benefits the public at large and incidentally benefits the private entrepreneurs. One cannot view the planning process in the abstract and there should be a realistic approach. Industrial projects and industrial development are possible only when there is initiative, coordination and participation on the part of both the private entrepreneurs as well as the governmental agencies. The active role and initiative shown by AKI Ltd., cannot give a different colour to the acquisition which otherwise promotes public purpose. The expression "foreign collaboration" used in some of the letters which the learned Advocate General states, is somewhat inappropriate, does not negative the existence of public purpose.

32. Much of the support has been drawn by the learned counsel for the appellants from the letter dated 14-9-1995 addressed by the Additional Secretary, Industries Department, to the Commissioner, Indore soon after the meeting of the representatives of AKI Ltd., with the Chief Minister and other senior officials. Much of the argument has been built up on it to characterize the acquisition as one for private purpose. We find no legal basis for such comment. The wording of the letter read in isolation may convey the impression that the Chief Minister assured allotment of 150 to 200 acres of land to AKI Ltd., for starting its modern diamond unit. But, it is fairly clear from the subsequent acts and correspondence including the MOU that the land sought for was in connection with the proposal for a diamond park project in which not only AKI Ltd., but also other companies or firms are to set up the diamond-cutting and polishing industries with modern technology. Pursuant to the alleged assurance, no offer was made nor any steps taken to hand over 150 acres of land to AKI Ltd. The said letter may be the starting point for action, but, as already noticed the authorities concerned proceeded to acquire the land for the public purpose

within the framework of the Land Acquisition Act. The contents of the letter literally read, were not translated into action. But, it only provided a starting point to proceed with the acquisition for industrial purpose.

33. We are of the view that none of the factors pointed out by the learned counsel for the appellants make any dent on the orientation towards public purpose nor do they establish that the acquisition was resorted to by the Government to achieve oblique ends. The speed at which the proposal was pursued should be appreciated rather than condemning it, though the overzealousness on the part of the authorities concerned to short-circuit the procedure has turned out to be counterproductive. True, the tardy progress of acquisition would have sent wrong signals to the prospective investors, as contended by the learned Advocate General. However, due attention should have been given to the legal formalities such as holding of enquiry, specification of public purpose in clear terms and giving sufficient indication of the State meeting the cost of acquisition wholly or in part. At the same time, we cannot read mala fides in between the lines; in fact, no personal malice or ulterior motives have been attributed to the Chief Minister or to any other official. The materials placed before us do not lead to the necessary or even reasonable conclusion that the government machinery identified itself with the private interests of the Company, forsaking public interest. Public purpose does not cease to be so merely because the acquisition facilitates the setting up of industry by a private enterprise and benefits it to that extent; nor the existence or otherwise of public purpose be judged by the lead and initiative taken by the entrepreneurs desirous of setting up the industry and the measure of coordination between them and various State agencies. The fact that despite the unwillingness expressed by AKI Ltd. to go ahead with the project, the Government is still interested in acquisition is yet another pointer that the acquisition was motivated by public purpose.

21. After considering *Somavanti v. State of Punjab* (supra) in paragraph 35 of the judgment to reiterate that it will be open to the Court in every case which comes up before it to examine whether the contribution made by the State satisfies the requirement of law, the following was held in paragraphs 37, 38, 39, 40 & 41:

37. A number of decisions were cited before us by the learned Advocate-General in support of the contention that the declaration of the Government is final. One of those decisions is *Wijeyesekera v. Festing* (1919 AC 646 AIR 1919 PC 155). In that case dealing with Ceylon Ordinance 3 of 1876 [Acquisition of Land Ordinance, (Ceylon), 1876] which incidentally did not contain a provision similar to that of sub-section (3) of Section 6, Their Lordships observed:

The whole frame of the ordinance shows that what the District Court is concerned with is the assessment of compensation, but Their Lordships do not desire to rest their opinion that the decision of the Governor is final merely upon the question of the court before which the question is raised. It appears to Their Lordships that the decision of the Governor that the land is wanted for public

purposes is final, and was intended to be final, and could not be questioned in any court.

There, the land was required for a road and the contention was that the Government did not take the opinion of the Surveyor-General as to its fitness for such purpose. On this ground it was contended that the Governor's declaration could be questioned. But this was negated by the Privy Council. Following this decision in *Vadlapatla Suryanarayana Vs. The Province of Madras* a Full Bench of the Madras High Court held that a declaration by the Provincial Government u/s 6(1) of the Act that certain lands were required for a public purpose is final and, where there is no charge against the Provincial Government that it had acted in fraud of its powers its action in directing the acquisition cannot be challenged in a court of law. Similar view has been taken in *Samiruddin Sheikh Vs. Sub-Divisional Officer and Others* ; *V. Gopalakrishna Vs. The Secretary, Board of Revenue, Madras and Another*, *Sree Raja Kandregula Srinivasa Jagannadha Rao Pantulu Bahaddur Vs. State of Andhra Pradesh and Another*, *Secretary of State for India in Council Vs. Akbar Ali and Another*, Several other decisions to the same effect, some of them post-Constitution, were also mentioned by the learned Advocate-General, which take the same view as in these decisions. Not a single decision was, however, brought to our notice in which it has been held that the question as to what is a public purpose or whether it exists can be enquired into by the courts even in the absence of colourable exercise of power, because Section 6(3) has become void under Article 13(2) of the Constitution.

38. It was next contended that sub-section (3) of Section 6 cannot stand in the way in a proceeding under Article 226 or under Article 32 of the Constitution and in support of this argument reliance was placed upon the decision in *Chudalmuthu Pillai v. State* ILR (1952) Trav. Co. 488: (AIR 1952 Trav-Co. 522), *Maharaja Luchmeswar Singh v. Chairman of the Darbhanga Municipality*, 17 Ind App 90 (PC), *Rajendra Kumar Ruia and Another Vs. Govt. of West Bengal and Another*, ; *Major S. Arjan Singh and Another Vs. The State of Punjab and Others*, . In the first mentioned case it was contended that the order was actuated by mala fides and also that there were various irregularities in the proceedings. As we have already indicated, if the declaration is vitiated by fraud, then the declaration is itself bad and what is bad cannot be protected by sub-section (3) of Section 6. In the next case the act of the Court of Wards in handing over the ward's lands for a nominal consideration for a public purpose was challenged in a suit. The challenge was upheld by the Privy Council on the ground that lawful possession could only be taken by the State in strict compliance with the provisions of the Land Acquisition Act. The question raised here did not arise for consideration in that case. In the other two cases the declaration was challenged under Article 226 and in both the cases the challenge failed. In the first of the two latter mentioned case it failed on the ground that there was no fraud and in the second on the ground that the provisions of sub-section (3) of Section 6 precluded the court from challenging the validity of the declaration. None of these cases, therefore, supports the contention of the

petitioners.

39. Moreover we are not concerned here with the powers of the High Court under Article 226 but with those of this Court. It is said, however, that the bar created by Section 6(3) would not stand in the way of this Court while dealing with a petition under Article 32 and, therefore, it is open to us to ascertain whether an acquisition is for a public purpose or not. While it is true that the powers of this Court cannot be taken away by any law which may hereafter be made unless the Constitution itself is amended we are here faced with a provision of law which is a pre-Constitution law and which is protected by the Constitution -- to the extent indicated in Article 31(5)(a) and an attack on its validity on the ground that it infringes the right guaranteed by Article 19(1) (/) has failed. Therefore, it is a good and valid law and the restriction placed by it on the powers of this Court under Article 32 must operate.

40. Though we are of the opinion that the courts are not entitled to go behind the declaration of the Government to the effect that a particular purpose for which the land is being acquired is a public purpose we must emphasise that the declaration of the Government must be relatable to a public purpose as distinct from a purely private purpose. If the purpose for which the acquisition is being made is not relatable to public purpose then a question may well arise whether in making the declaration there has been, on the part of the Government a fraud on the power conferred upon it by the Act. In other words the question would then arise whether that declaration was merely a colourable exercise of the power conferred by the Act, and, therefore, the declaration is open to challenge at the instance of the party aggrieved. To such a declaration the protection of Section 6(3) will not extend. For, the question whether a particular action was the result of a fraud or not is always justiciable, provisions such as Section 6(3) notwithstanding.

41. We were referred by the learned Advocate-General to a recent decision of the House of Lords in *Smith v. East Elloe Rural District Council* 1956 AC 736 to which reference was made by the learned Advocate-General. In that case Their Lordships were considering the Acquisition of Land (Authorization of Procedure) Act, 1946, (9 and 10 Geo. 6, c. 49) Schedule I, Part IV, paras 15, 16. Para 15(1) of Part IV, Schedule I to the Act provides as follows:

If any person aggrieved by a compulsory purchase order desires to question the validity thereof... on the ground that the authorisation of compulsory purchase thereby granted is not empowered to be granted under this Act... he may, within six weeks from the date on which notice of the confirmation or making of the order is first published make an application to the High Court....

Para 16 provides as follows:

Subject to the provisions of the last foregoing paragraph, a compulsory purchase order shall not... be questioned in any legal proceedings whatsoever....

The land having been made the subject of compulsory purchase the owner brought an action in which, among other things, a declaration was added that the order was made and confirmed wrongfully and in bad faith and that the Clerk acted wrongfully and in bad faith in procuring its order and confirmation. The House of Lords held by majority that the action could not proceed except against the Clerk for damages because the plain prohibition in para 16 precluded the court challenging the validity of the order. They also held that para 15 gave no opportunity to a person aggrieved to question the validity of a compulsory purchase order on the ground that it was made or confirmed in bad faith. As we have already said the condition for the exercise of the power by the State Government is the existence of a public purpose (or the purpose of a company) and if the Government makes a declaration u/s 6(1) in fraud of the powers conferred upon it by that section the satisfaction on which the declaration is made is not about a matter with respect to which it is required to be satisfied by the provision and, therefore, its declaration is open to challenge as being without any legal effect. We are not prepared to go as far as the House of Lords in the above case.

After holding that when the acquisition is for a company, rule 4 of the Company Rules is to be mandatorily followed Hon"ble the Supreme Court quashed the acquisition.

22. In the present case also, the MoU and the implementation agreement between the State and respondent No. 2 provide for the entire cost of acquisition to be borne by the Company. A sum of Rs. 13 crores was deposited by the Company towards cost of acquisition and not for payment of advance lease premium/lease rent. In fact, there is no such mention in the MoU/implementation agreement that the Companies shall pay advance lease premium/lease rent for the acquired land. The request for acquisition was made by the Company specifically mentioning the MoU with the State. The stand taken in the State's return that the acquisition is for industrial purpose and it would be leased out to any industrial unit and not necessarily to Respondent No. 10 Company is not only false but the stand itself has been taken in a malafide manner just to bring the case within the parameters of the Supreme Court decision in the case of Pratibha Nema (Supra). It is strange as to how the land can be leased out to any Company when the project report, MoU, SIPB meeting etc., refers to this very land as the area where Respondent No. 10 Company would establish its power plant and similar procedure has been followed in all other cases. Once the advance amount has been deposited towards compensation after identification of the land by the Company and the State having no participation at all in establishment of project which is a pure and simple business proposition of a private Company, this Court applying the ratio laid down in the matter of Devinder Singh (supra) has no hesitation in holding that the subject acquisition under Part-II of the Act 1894 by branding it for public purpose is in mala fide and colourable exercise of power.

23. In *Gaukaran Singh* (supra) this Court was considering the validity of acquisition of land for a private Company, Lafarge (India) Private Limited, a Cement Plant where the projected public purpose was for establishment of a rail link between their cement plant and the nearest railway station at their own expenses. In the said case also, there was an MoU between the State and the Cement Company wherein the State promised to provide necessary land for construction of railway siding. This Court after narrating the scheme of Act, 1894, the definition of Company u/s. 3(e) and the definition of public purpose u/s. 3(f) including the amendment of Section 3(f) by Section 3 of CP & Berar Act No. 20 of 1949, has held that the said amendment u/s. 3(f) was for a limited purpose to make provisions for speedy acquisition of land and for resettlement and rehabilitation of the displaced persons under the Central Province and Berar Resettlement and Rehabilitation of Displaced Persons (Land Acquisition) Act, 1949. However, the definition of public purpose as it exists today in the Act 1894 was never substituted either by the State of M.P. or by the new State of C.G. and thus the definition as existing in the Statute Book i.e. the Act, 1894 is applicable in the State of Chhattisgarh also. This Court relied on the decision of M.P. High Court in *Ramlal v. State of M.P.* 1979 MPWN Volume II, Note No. 1 and in *Shikar Chand Laxmi Chand v. State of M.P.*, 1981 MPU 389 and thereafter proceeded to consider the judgments in *Devinder Singh* (supra) and *Somawanti* (supra) to hold that construction of rail link from railway siding to the factory premises at the request of the private Company at its own expenses, by no stretch of imagination can fall within the well accepted meaning of public purpose. Thus the view taken by this Court in the preceding paragraphs is fully supported by the judgment rendered in *Gaukaran Singh* (supra).

24. At the cost of repetition, this Court would reiterate that in *Pratibha Nema* (supra), the diamond park scheme was floated by the Government and the land was to be allotted to 12 diamond cutting industries with whom the Government had entered into MoU which stipulated that Company shall pay advance lease amount to the Government Corporation which had paid the amount of compensation. However, in the present case, the agreement between the private power company and the State Government in the form of MoU and implementation agreement provides just the contrary wherein it has been stipulated that the entire cost of acquisition shall be borne by the Company and the Government shall be bound to lease out the land with respect to Government land only and not with respect to acquired land. The entire project from the stage of identification of land, preparation of project and its establishment has been done by Respondent No. 10 Power Company and other Power Companies in connected matters. It is not the project of the government or a joint venture project or a project in PPP format. The grant of lease of land in an industrial area to various Companies by accepting advance lease premium is another thing but acquiring the land at the behest of the Company and thereafter accepting the amount of compensation by appropriating it towards advance lease premium is wholly different and is a camouflage. It is nothing but a colourable exercise of

power to acquire a land for a Company under Part-II which cannot be done in view of the Scheme of Act, 1894 as held by this Court in Gokran Singh (supra); and by the Supreme Court in Devinder Singh (supra). If the modus operandi adopted by the State and CSIDC is approved then there shall be no justification for providing a separate procedure for acquisition for a Company under Part VII and in every private project exclusively belonging to a Private Company which is setting up the industry as a business preposition can be treated for public purpose by obtaining advance amount of compensation and thereafter appropriating it towards advance lease premium. An ex-proprietary legislation for acquiring land of a citizen for a public purpose cannot be construed so liberally to satisfy the power of "eminent domain" which should otherwise be construed strictly as held by the Supreme Court in various judgments including Hindustan Petroleum Company Ltd. v. Darius Sapur Chennai (supra).

25. It is to be noted that if the cost of acquisition was not to be borne by the Private Power Company and it was decided contrary to the MoU/agreement that the cost of acquisition is to be borne by the State Government through its instrumentality, CSIDC, it was necessary for the State who was exercising its sovereign power of "eminent domain" to have produced before this Court the relevant file where the State Government has taken a conscious decision by way of a Cabinet meeting or in some other permissible mode to acquire the land for private Company in departure of the stipulation in the MoU/implementation agreement and if any such decision has been taken, the record thereof should be made available to the Court. When the State is exercising power of "eminent domain", it cannot raise any point just for the sake of argument without substantiating it from the Government record. The question is not of a nominal contribution by the State but if the argument of the State is accepted in the present case then the entire cost of acquisition has been borne by the State Government so as to justify the invocation of the acquisition under Part-II of the Act 1894.

ACQUISITION OF PRIME AGRICULTURAL LAND

26. The second question falling for consideration is whether prime agricultural land, in some cases yielding double crop, can be acquired for industrial purpose for the ultimate benefit of a Private Power Company depriving the agriculturists of their means of livelihood. In the case in hand, particularly, W.P. (C). No. 279/2012, the petitioners belonged to and the Power Plant is coming up in a predominantly tribal area of Binjkot where the tribes are thickly populated. The petitioners are agriculturists and some of them belong to tribal community. In other petitions also, majority of the petitioners belong to Scheduled Tribe or Other Backward Classes (OBC) of the Society and are agriculturists having agriculture as their principal source of livelihood. While considering the importance of land, food production and its impact on economy, Hon"ble the Supreme Court in the matter of Raghbir Singh Sehrawat Vs. State of Haryana and Others, has held thus in paragraphs 2, 3, 4, 42 & 43:

2. More than 16 decades ago, John Stuart Mill wrote:

land differs from other elements of production, labour and capital in not being susceptible to infinite increase. Its extent is limited and the extent of the more productive kinds of it more limited still. It is also evident that the quantity of produce capable of being raised on any given piece of land is not indefinite. These limited quantities of land, and limited productiveness of it, are the real limits to the increase of production.

3. In 1947, the first Prime Minister of India Pt. Jawahar Lai Nehru said "everything else can wait, but not agriculture". In its fifth and final report, the National Commission on Farmers headed by Dr. M.S. Swaminathan observed that prime farmland must be conserved for agriculture and should not be diverted for non-agricultural purposes, else it would seriously affect the availability of food in the country where 60% of the population still depends on agriculture and people living below poverty line are finding it difficult to survive.

4. Unfortunately, these words of wisdom appear to have become irrelevant for the State apparatus which has used the Land Acquisition Act, 1894 (for short "the Act") in the last two decades for massive acquisition of the agricultural land in different parts of the country, which has not only adversely impacted the farmers, but also generated huge litigation adjudication which consumes substantial time of the courts. These appeals filed against the orders dated 17-5-20101 and 19-11-20102 of the Division Bench of the Punjab and Haryana High Court is one of many such cases which the landowners are compelled to file with the hope that by the court's intervention they will be able to save their land.

42. It is difficult, if not impossible, to appreciate as to why the State and its instrumentalities resort to massive acquisition of land and that too without complying with the mandate of the statute. As noted by the National Commission on Farmers, the acquisition of agricultural land in the name of planned development or industrial growth would seriously affect the availability of food in future. After independence, the administrative apparatus of the State has not spent enough investment in the rural areas and those who have been doing agriculture have not been educated and empowered to adopt alternative sources of livelihood. If land of such persons is acquired, not only the current but the future generations are ruined and this is one of the reasons why the farmers who are deprived of their holdings commit suicide.

43. It also appears that the authorities concerned are totally unmindful of the plight of those sections of the society, who are deprived of their only asset like small house, small industrial unit, etc. They do not realise that having one's own house is a lifetime dream of a majority of the population of this country. Economically affluent class of society can easily afford to have one or more houses at any place or locality in the country but other sections of the society find it extremely difficult to purchase land and construct house. Majority of the people spend their lifetime savings for building a small house so that their

families may be able to live with a semblance of dignity. Therefore, it is wholly unjust, arbitrary and unreasonable to deprive such persons of their houses by way of the acquisition of land in the name of development of infrastructure or industrialisation. Similarly, some people set up small industrial units after seeking permission from the competent authority. They do so with the hope of generating additional income for their family. If the land on which small units are established is acquired, their hopes are shattered. Therefore, before acquiring private land the State and/or its agencies/instrumentalities should, as far as possible, use land belonging to the State for the specified public purposes. If the acquisition of private land becomes absolutely necessary, then too, the authorities concerned must strictly comply with the relevant statutory provisions and the rules of natural justice.

(Emphasis supplied)

27. In the matter of Devinder Singh (supra) also Hon''ble the Supreme Court has observed thus in paragraph 50:

The lands in question are recorded as Shahi lands. It is not in dispute that they are agricultural lands. The Act contemplates that such lands may not be acquired.

(Emphasis supplied)

28. In the matter of Pooran and others vs. State of Uttar Pradesh and others decided by the Division Bench of Allahabad High Court on 04.12.2009, copy of which, has been supplied by learned counsel for the petitioner, the Allahabad High Court while dealing-with a similar issue where the acquisition was for a private power plant has held thus in Paragraph 64:

64. Thus, Section 4 before amendment used only expression "for any public purpose" whereas in Section 6 both the expressions "for any public purpose" or "for company" were used. The amendments made by 1984 Amendment Act clearly separated the acquisition "for any public purpose" and acquisition "for company" from the stage of issuance of notification u/s 4 itself. For acquisition for a Company, compliance of part VII as well as compliance of land Acquisition (Companies) Rules, 1963 was made necessary. The purpose of inquiry under the Land Acquisition Rules, 1963 and Part VII has to be examined. The State having itself undertaken numerous welfare, activities, acquisitions for public purpose by State are increasing day by day. The land which is available specially the agricultural land is limited, more strict inquiry and rigorous procedure has been envisaged and contemplated by 1984 Amendment. At this juncture, it is necessary to refer to Rules 4 8b 5 of the Land Acquisition (Companies) Rules, 1963. Various requirements of Rule 4 indicate that normally the request of the Company for acquisition is not to be accepted unless it has made best endeavour to find out "the land made all reasonable efforts to get such lands by negotiation on payment of reasonable price. The area of land proposed to be acquired is not excessive and if the land proposed to be acquired is a good agricultural land, no alternative suitable site is to be found. The enquiry under Rule 4 is envisaged

with the object that no agricultural land to be acquired if any suitable site can be found. The obligation to find suitable site has been placed on the Government which shall obtain a report from the Collector on the above mentioned issues.

(Emphasis supplied)

A common thread running from above referred judgments dealing with acquisition of agricultural lands is that in view of the Rule 4 of the Rules 1963, acquisition of agricultural lands should be avoided and further that the agricultural land being the primary means of livelihood of agriculturists, it has the effect of uprooting the families, depriving them of their means of livelihood and social status, therefore, acquisition of agricultural lands for a Company should not be made unless it is established that no other land is available for acquisition. In the present case, there is no such exercise undertaken by the State Government before proceeding to acquire agricultural land and whatever was the project and selection of land submitted by Respondent No. 10, the State Government has readily accepted the same to the detriment of the agriculturists.

"THERMAL EMISSION, FLY ASH VIS-A-VIS PUBLIC PURPOSE"

29. Whether existence of public purpose requires consideration of thermal emission and fly ash to be generated by large number of thermal power plants to be established in the District of Raigarh and Janjgir-Champa and if the cumulative effect of these plants would damage the environment, it still achieves the public purpose is the next point for consideration. As per document filed in one of the writ petition, the State Government has executed Memorandum of Understandings (MoUs) with 77 industrial undertakings, of which, as many as 51 power plants are proposed to be set up in the District of Raigarh and Janjgir-Champa. The total proposed generating capacity in 77 MoUs is almost 72,000 MWs, of which more than 50,000 MWs are to be produced in these two districts. Though Respondent No. 10 in W.P. 279 of 2012 has obtained environment clearance and other Power Companies have also obtained such clearance or they are in the process of obtaining environment clearance, however, each of the proposed plant is granted clearance on stand alone basis without examining the total/cumulative effect of the existing power plants and all other plants which are in the stage of implementation. In the matter of Karnataka Industrial Areas Development Board Vs. Sri. C. Kenchappa and Others, , the following has been held from paragraphs 99 to 102:

99. In the Rio Conference of 1992 great concern had been shown about sustainable development. "Sustainable development" means "a development which can be sustained by nature with or without mitigation". In other words, it is to maintain delicate balance between industrialisation and ecology. While development of industry is essential for the growth of economy, at the same time, the environment and the ecosystem are required to be protected. The pollution created as a consequence of development must not exceed the carrying capacity of the ecosystem. The courts in various judgments have developed the

basic and essential features of sustainable development. In order to protect sustainable development, it is necessary to implement and enforce some of its main components and ingredients such as precautionary principle, polluter-pays and public trust doctrine. We can trace the foundation of these ingredients in a number of judgments delivered by this Court and the High Courts after the Rio Conference, 1992.

100. The importance and awareness of environment and ecology is becoming so vital and important that we, in our judgment, want the appellant to insist on the conditions emanating from the principle of "Sustainable Development":

(1) We direct that, in future, before acquisition of lands for development, the consequence and adverse impact of development on environment must be properly comprehended and the lands be acquired for development that they do not gravely impair the ecology and environment.

(2) We also direct the appellant to incorporate the condition of allotment to obtain clearance from the Karnataka State Pollution Control Board before the land is allotted for development. The said directory condition of allotment of lands be converted into a mandatory condition for all the projects to be sanctioned in future.

101. This has been an interesting judicial pilgrimage for the last four decades. In our opinion, this is a significant contribution of the judiciary in making serious endeavour to preserve and protect ecology and environment, in consonance with the provisions of the Constitution.

102. Sustainable use of natural resources should essentially be based on maintaining a balance between development and the ecosystem. Coordinated efforts of all concerned would be required to solve the problem of ecological crisis and pollution. Unless we adopt an approach of sustainable use, the problem of environmental degradation cannot be solved.

(Emphasis supplied)

30. In view of the above pronouncements by the Supreme Court, it is the duty of the respondents particularly Respondent No. 1 State of Chhattisgarh, Respondent No. 2 Union of India, MOEF and respondent No. 9 Regional Officer, Environment Conservation Board, to take all possible measures to protect the environment and the ecosystem of the areas in Raigarh and Janjgir-Champa districts of the State where heavy concentration of thermal power plants have taken place. The respondents are duty bound to enforce the precautionary principle and public trust doctrine for protection of environment and eco-system. Thus while considering the existence of public purpose the issues of environment degradation and damage to ecosystem have to be kept in mind.

31. In one of the writ petitions, W.P. (C). No. 374/2012 petitioner has annexed an order passed by the National Green Tribunal, Principle Bench, New Delhi on 20.09.2011 in Appeal No. 7/2011(T) in the matter between Krishi Vigyan Arogya

Sanstha and others v. MOEF, Government of India and others (Annexure P-12) in which the issue raised before the NGT was about environment clearance granted to a power plant for establishment of 3 x 660 MWS Thermal Power Unit in Nagpur District in State of Maharashtra. It was argued before the NGT that the coal ash/fly ash, a by-product generated by a thermal power plant on account of burning of coal for generating electricity, is more radio active than nuclear waste generated from Nuclear Power Plant. It was discussed and held thus in the said order of NGT:

However, the Environmental Impact Assessment as well as Expert Appraisal Committee have completely ignored the objections raised by Mr. Paliwal and others regarding nuclear radiation that would be caused by the proposed project. But we are of the opinion that in a project of this nature, as stated by Mr. Paliwal, in the Public hearing, the effect of nuclear radiation was neither studied nor examined and it was simply brushed aside in the arguments before this Tribunal stating that there was no necessity of examining the project from nuclear radiation point of view as no such plant would cause nuclear radiation which harms the human habitation or the environmental ecology in the surrounding area. In this regard, affidavit by Respondent No. 1 has been filed stating that the nuclear radiation level would be within the permissible limits. Appellant and Project Proponent have not filed any affidavits, however, several research publications and reports were placed before us and two nuclear scientists were made to appear before this Tribunal (one on each side) to say that the nuclear radiation emanated from the thermal power project is more than the nuclear radiation which takes place from Nuclear Power Plant--and the other one to say that no such nuclear radiation danger is seen in a plant of thermal power project. The learned counsel for the appellant also drew our attention to few research publications, both national and international, to show that there is bound to cause increased level of nuclear radiation in and around the thermal power stations of this nature, one of them reads as under:

Radio elemental characterization of fly ash from Chandrapur Super Thermal Power Station, Maharashtra, India by Rafeev Menon, P. Raja, Deepak Malpe, K.S.V. Subramaniyam and V. Balaram in CURRENT SCIENCE, VOL. 100, No. 12, 25 JUNE, 2011

Natural radioactivity due to the presence of ^{40}K , ^{238}U and ^{232}Th was measured in fly ash samples collected from economizer, aerator and electrostatic precipitator (EP) of the Chandrapur Super Thermal Power Station (CSTPS) using a NaI (Tl)-based gamma ray spectrometer. The study indicates an elevated concentration of these radio-nuclides, especially in the finer ash samples from EP, which may provide an exposure pathway through inhalation of airborne ashes and could probably cause severe environmental and human health problems. The present study gains significance as it provides the requisite basic data on the radio-nuclides concentration in fly ash from CSTPS for a detailed follow up of environmental monitoring and to formulate effective management strategies.

It was also placed before us that these radiations enter into the water bodies and food chain and in long run this results in impact on population residing around the project area. Our attention was drawn to the following:

Coal Ash Is More Radioactive than Nuclear Waste

(Source:

<http://www.scientificamerican.com/article/off-m?id=coal-ash-is-more-radioactive-than-nuclear-waste>)

....Over the past few decades, however, a series of studies has called these stereotypes into question. Among the surprising conclusions: the waste produced by coal plants is actually more radioactive than that generated by their nuclear counterparts. In fact, the fly ash emitted by a power plant—a by-product from burning coal for electricity—carries into the surrounding environment 100 times more radiation than a nuclear power plant producing the same amount of energy.

.... Fly ash uranium sometimes leaches into the soil and water surrounding a coal plant, affecting cropland and, in turn, food. People living within a "stack shadow" - the area within a half-to one mile (0.8-to 1.6-kilometer) radius of a coal plant's smokestacks—might then ingest small amounts of radiation. Fly ash is also disposed of in landfills and abandoned mines and quarries, posing a potential risk to people living around those areas.

....The result: estimated radiation doses ingested by people living near the coal plants were equal to or higher than doses for people living around the nuclear facilities. At one extreme, the scientists estimated fly ash radiation in individuals' bones at around 18 milligrams (thousandths of a rem, a unit for measuring doses of ionizing radiation) a year. Doses for the two nuclear plants, by contrast, ranged from between three and six milligrams for the same period. And when all food was grown in the area, radiation doses were 50 to 200 percent higher around the coal plants.

....,that individuals living near coal-fired installations are exposed to a maximum of 1.9 milligrams of fly ash radiation yearly. To put these numbers in perspective, the average person encounters 360 milligrams of annual "background radiation" from natural and man-made sources, including substances in Earth's crust, cosmic rays, residue from nuclear tests and smoke detectors.

Having discussed the matter as above, the NGT concluded thus in paragraph 10.1 of the order:

Para 10.a. The first respondent. Ministry of Environment and Forests is directed to look into the matter as to long term impacts caused by nuclear radiation from the thermal power projects, by instituting a scientific long term study involving Bhabha Atomic Research Agency or any such other recognized scientific institution dealing with nuclear radiation with reference to the coal ash generated by thermal power project (Respondent No. 3) particularly the cumulative effect

of a number of thermal power project located in the area on human habitation and environment and ecology. The study shall also take into consideration the health profile of the residents within the in which the pollutants are expected to spread from the thermal power project.

(Emphasis supplied)

32. Though environment issue was argued by the petitioner, yet the respondents have submitted that this Court may not consider any other issue than the issue of land acquisition and the arguments raised by learned Counsel for the petitioner(s) in this regard may not be considered. This court has given anxious consideration to the arguments raised by both the parties in this regard to conclude that though environment issue per-se is not involved in the present writ petition yet while considering the existence of public purpose this may be one of the aspects for considerations, which in the opinion of this Court, has not been properly addressed by the Land Acquisition Officer/Collector. Since sustainable development means a development which can be sustained by nature with or without mitigation, while striking balance between development and ecology, it is necessary to dwell upon this aspect of the matter and therefore, this Court expects from the concerned respondents to sincerely consider the damage which will ultimately be caused by huge concentration of thermal power plants in the districts of Janjgir-Champa and Raigarh.

Section 44-B prohibits acquisition for a Private Company for any other purpose than the purposes mentioned in Section 40(1)(a)

33. The next issue arising for consideration is whether acquisition for a Company can be made only under the provisions contained in Section 40(1)(a) read with Section 44-B of the Act and in no other way. To substantiate the argument that acquisition for a Company is permissible only to the extent u/s 44-B of the Act as provided in 40(1)(a), learned counsel for the petitioner(s) would argue that the State Government cannot acquire land for a private Company by taking recourse to procedure prescribed under Part-II of the Act and Section 44-B only makes the said position more clear to effectuate the legal position that the purpose for which the land can be acquired for a Company is only to the extent provided u/s. 40(1)(a) and not for any other purpose. Strongly refuting this argument, it has been argued on behalf of the respondents that in view of the provisions contained u/s. 44-B of the Act, the acquisition for a Company for the purpose mentioned in Section 40(1)(a) is only limited in case where the acquisition is under Part-VII of the Act but when the acquisition is for a public purpose, resort has to be made to the procedure prescribed under Part-II and the argument to the contrary raised by the petitioner(s) has no legs to stand. Section 44-B of the Act which falls for consideration is reproduced hereunder:

44-B Land not to be acquired under this Part except for certain purpose for private companies other than Government Companies.-

Notwithstanding anything contained in this Act, no land shall be acquired under

this Part, except for the purpose mentioned in clause (a) of subsection (1) of Section 40, for a private Company which is not a Government company.

Explanation-- "Private company" and "Government company" shall have the meanings respectively assigned to them in the Companies Act, 1956 (1 of 1956).

It would clearly appear that it begins with words "notwithstanding anything contained in this Act". Thus section 44-B is enacted in a negative term with a non-obstante clause providing that "no land "shall be acquired under this part except for the purpose mentioned in Clause (a) of sub-section (1) of Section 40". For a private Company acquisition for a purpose other than those mentioned in Section 40(1)(a) is impermissible. This section was introduced by Act No. 39 of 1962 with an object to clothe the power for private company praying for acquisition of land by the Government exercising its power of "eminent domain" for construction of dwelling house for workmen employed by the Company or for the provision of amenities directly connected therewith.

34. It has also been argued by learned counsel for the respondents that Respondent No. 10 Company having entered into an agreement with the State Government within the meaning of Section 43, consequently Sections 39 to 42 of the Act are not applicable and the only procedure for acquisition of land for the Company is under Part-II of the Act. Section 43 of the Act reads as under:

43. Sections 39 to 42 not to apply where Government bound by agreement to provide land for Companies.--The provisions of Sections 39 to 42, both inclusive, shall not apply and the corresponding sections of the Land Acquisition Act, 1870 (10 of 1870), shall be deemed never to have applied, to the acquisition of land for any Railway or other Company, for the purposes of which, [under any agreement with such Company, the Secretary of State for India in Council, the Secretary of State, [The Central Government or any State Government is or was bound to provide land].

The above provisions contained in Section 43 provides for acquisition of land for railways or for other Company for the purpose of which under any agreement with such Company, Central Government or any State Government is or was to be bound to provide land. Thus on the basis of this provision if the arguments put-forth by the respondents are accepted, the provisions of Part-VII can easily be defeated by entering into such agreement to provide land. The provisions of section 43 cannot be read in a manner so as to defeat the very object and purpose of the Act. The statement of object by amending Act No. 68 of 1984 clearly provides that the acquisition of land for non-government companies under the Act shall henceforth be made in pursuance of Part VII of the Act in all the cases. It is settled that the interpretation of provisions of an Act which has disastrous results and defeats the purpose and object of the Act has to be avoided, therefore, this Court is of the opinion that even if the agreement between Private Power Company and the State Government is treated to be an agreement u/s. 43, the acquisition for a Company can only be made for the

purpose mentioned u/s. 40(1)(a) and not under Part-II of the Act.

Whether the Land Acquisition Officer is competent/empowered to consider and decide Section 5-A objection

35. The next issue arising for consideration is whether the Sub-Divisional Officer-cum-Land Acquisition Officer was competent to perform the duties of the Collector to hear the objections filed u/s. 5-A of the Act.

It has been urged by the petitioners that all the Sub-Divisional Officers of the State have not been appointed by the appropriate government to perform the functions of a Collector, therefore, Sub-Divisional Officers in respective cases could not have heard the objections u/s. 5-A of the Act and thus the impugned action of the SDOs in hearing the objection having been done by an incompetent officer who has no jurisdiction, it vitiates the proceedings from the stage after issuance of notification u/s. 4 of the Act. Countering this submission, learned counsel for the respondents, particularly, learned State Counsel would argue that by virtue of the notification dated 6th March, 1987 the State Government has appointed all the Sub-Divisional Officers (Revenue) to perform the duties/functions of Collector under the Act, therefore, there is no illegality committed by any Land Acquisition Officers-cum-Sub-Divisional Officers to hear the objections u/s. 5-A of the Act.

36. The term "appropriate government" has been defined u/s. 3(ee) to mean, in relation to acquisition of land for the purpose of Union, the Central Government, and, in relation to acquisition of land for any other purposes, the State Government.

The expression "Collector" has been defined u/s. 3(c) to mean a Collector of a District and includes a Deputy Commissioner and any other officer specifically appointed by the appropriate government to perform the functions of a Collector under this Act. Thus the appropriate government i.e., the State Government has been empowered to specially appoint any other officer to perform the functions of a Collector under this Act. In the notification dated 6th March, 1987, the State Government has appointed such Deputy Collectors who have been promoted either from the post of Tehsildar or Superintendent (Land Records) to discharge the function of a Collector under the Act and similarly such Deputy Collectors who have been promoted from the post of Office Superintendent; and have worked as Deputy Collector for more than 5 years and have passed all the departmental examinations have also been appointed to discharge the functions of Collector within the area of their jurisdiction under the Act. Thus on a plain reading of notification, it clearly appears that there is no general delegation or appointment of all the Sub-Divisional Officers (Revenue)/Deputy Collectors in the State to perform the functions of Collector under the Act, 1894. There is nothing in the record to satisfy the requirement of the notification for its application in each of the cases that the concerned Sub-Divisional Officer was promoted from the post of Tehsildar or Superintendent (Land Records) or from the post of Office

Superintendent and has worked for more than 5 years as Deputy Collectors and has passed all the departmental examinations. In absence of these pre-requisites mentioned in the notification itself, it cannot be presumed that the concerned Sub-Divisional Officer was lawfully discharging the function of the Collector while hearing the objections u/s. 5-A of the Act.

37. Though the appointment made by the notification would otherwise empower the Deputy Collector to discharge the functions of Collector under the Act but the said Deputy Collector/SDO (Revenue) has to satisfy the specific requirements mentioned in the notification before he proceeds to hear objections u/s. 5-A of the Act as Collector under the Act. However, in absence of the State having satisfied this Court that each of the Sub-Divisional Officer (Revenue)/Land Acquisition Officer satisfy the requirements, this Court has no hesitation in holding that the exercises of power of Collector to hear the objection u/s. 5-A is vitiated and thus on this ground, the entire land acquisition proceedings after issuance of Section 4 notification is vitiated because the hearing contemplated u/s. 5-A is to be provided by the Collector and by no other officer.

HEARING NOT PROVIDED IN TERMS OF SECTION 5-A(2)

38. Yet another issue canvassed before this Court is to the effect that the petitioners have not been afforded right of hearing provided u/s. 5-A of the Act in proper and adequate manner resulting in complete vitiation of the Land Acquisition Proceedings from the stage of consideration of objection u/s. 5-A onwards. It has been argued vehemently by learned counsel for the petitioners that in some cases the opportunity provided is an eye-wash and that too by an officer who has no jurisdiction to hear the objections. They would also submit that the objections have not been decided in an objective manner.

39. Per contra, the respondents have argued that the provisions of Section 5-A has been followed in its true spirit and the concerned Land Acquisition Officer was empowered to hear the objection under the State Governments notification, therefore, there is no illegality on this count and the arguments raised by the petitioner to the contrary has no substance. Before proceeding to examine the record of each of the case as available in the record of writ petition in the form of order sheets of the land acquisition proceedings and in other cases where the original records have been produced by the State, this Court deems it appropriate to keep in mind the nature of right of hearing available to the owner of the land and the corresponding obligation of the State under the said provision as to the manner in which the objection shall be heard and decided. Section 5-A of the Act, 1894 which falls for consideration is reproduced herein below for ready reference.

5A. Hearing of objections.-- (1) Any person interested in any land which has been notified u/s 4, sub-section (1), as being needed or likely to be needed for a public purpose or for a company may within 30 days from the date of the publication of the notification, object to the acquisition of the land or of any land

in the locality, as the case may be.

(2) Every objection under sub-section (1) shall be made to the Collector in writing, and the Collector shall give the objector an opportunity of being heard in person or by any person authorized by him in this behalf or by pleader and shall, after hearing all such objections and after making such further inquiry, if any, as he thinks necessary, either make a report in respect of the land which has been notified u/s 4, sub-section (1), or make different reports in respect of different parcels of such land, to the appropriate Government, containing his recommendations on the objections, together with the record of the proceedings held by him, for the decision of that Government. The decision of appropriate Government on the objections shall be final.

(3) For the purposes of this section, a person shall be deemed to be interested in land who would be entitled to claim an interest in compensation if the lands were acquired under this Act.

On a reading of the said provision it would appear that (1) any person interested in the land covered u/s 4 notification can file an objection to the acquisition within 30 days from the date of publication of the notification; (2) objection shall be made to the Collector in writing; (3) the Collector shall give objector an opportunity of being heard in person or by any person authorized by him in this behalf or by pleader; (4) after hearing all such objections and after making such further enquiry, as he thinks necessary, the Collector may either make a report in respect of the land or make different reports in respect of different parts of such land along-with his recommendations on the objections to the appropriate government; (5) the appropriate Government shall thereafter take a decision and such decision shall be final. Thus the Collector is under obligation to hear the objector in person and thereafter, sent a report after applying his mind for a decision to the appropriate government.

40. In *HPCL v. Darius Shapur Chennai* (supra), it has been held by the Supreme Court that Section 5-A of the Act confers valuable right in favour of a person whose lands are sought to be acquired and the Act being expropriator) legislation, it should be strictly construed as it deprives a person of his land without consent.

41. In *State of Punjab and Another Vs. Gurdial Singh and Others*, Hon"ble Supreme Court observed thus in paragraph 16 of the judgment:

16. The fourth point about the use of emergency power is well taken. Without referring to supportive case-law, it is fundamental that compulsory taking of a man's property is a serious matter and the smaller the man the more serious the matter. Hearing him before depriving him is both reasonable and pre-emptive of arbitrariness, and denial of this administrative fairness is constitutional anathema except for good reasons. Save in real urgency where public interest does not brook even the minimum time needed to give a hearing land acquisition authorities should not, having regard to Articles 14 (and 19), burke an enquiry u/

s 17 of the Act. Here a slumbering process, pending for years and suddenly exciting itself into immediate forcible taking, makes a travesty of emergency power.

(Emphasis Supplied)

42. In *Shyam Nandan Prasad and Others Vs. State of Bihar and Others*, Hon^{ble} the Supreme Court held that compliance with the provisions of Section 5-A is sine-qua non for valid acquisition and observed thus in para 10 of the Judgment:

10. At the pre-Section 6 stage, besides the mode of publications at various places where the land is situated, personal service of the copy of the notification is prominently required to be made on the person interested so that he can make objections in writing to the Collector, and on objections being made, the Collector is obliged to give to the objector opportunity of being heard either in person or by pleader. The Collector is further obliged to hear all such individual objections, make such further enquiries as necessary and then required to make an appropriate decision reporting the same to the Government. The decision of the Collector is supposedly final unless the appropriate Government chooses to interfere therein and cause affectation, suo motu or on the application of any person interested in the land. These requirements obviously lead to the positive conclusion that the proceeding before the Collector is a blend of public and individual enquiry. The person interested, or known to be interested, in the land is to be served personally of the notification, giving him the opportunity of objecting to the acquisition and awakening him to such right. That the objection is to be in writing, is indicative of the fact that the enquiry into the objection is to focus his individual cause as well as public cause. That at the time of the enquiry, for which prior notice shall be essential, the objector has the right to appear in person or through pleader and substantiate his objection by evidence and argument. And lastly, since the decision of the Collector may turn out to be final, unless interfered with by the Government, suo motu or on application, the Collector's decision is that of a quasi-judicial authority, arrived at by quasi-judicial methods.

(Emphasis Supplied)

Similar is the view taken by the Supreme Court in the matter of *Anand Singh and Another Vs. State of Uttar Pradesh and Others*, and *Sri Radhy Shyam (Dead) through L.Rs. and Others Vs. State of U.P. and Others*,

43. In *Raghvir Singh Sehrawat v. State of Haryana* (supra) Hon^{ble} the Supreme Court again considered the scheme of Section 5-A and its importance to hold thus in Paragraphs 39, 40 & 41:

39. In this context, it is necessary to remember that the rules of natural justice have been ingrained in the scheme of Section 5-A with a view to ensure that before any person is deprived of his land by way of compulsory acquisition, he

must get an opportunity to oppose the decision of the State Government and/or its agencies/instrumentalities to acquire the particular parcel of land. At the hearing, the objector can make an effort to convince the Land Acquisition Collector to make recommendation against the acquisition of his land. He can also point out that the land proposed to be acquired is not suitable for the purpose specified in the notification issued u/s 4(1). Not only this, he can produce evidence to show that another piece of land is available and the same can be utilised for execution of the particular project or scheme.

40. Though it is neither possible nor desirable to make a list of the grounds on which the landowner can persuade the Collector to make recommendations against the proposed acquisition of land, but what is important is that the Collector should give a fair opportunity of hearing to the objector and objectively consider his plea against the acquisition of land. Only thereafter, he should make recommendations supported by brief reasons as to why the particular piece of land should or should not be acquired and whether or not the plea put forward by the objector merits acceptance. In other words, the recommendations made by the Collector must reflect objective application of mind to the objections filed by the landowners and other interested persons.

41. Before concluding, we deem it necessary to observe that in recent past, various State Governments and their functionaries have adopted very casual approach in dealing with matters relating to the acquisition of land in general and the rural areas in particular and in a large number of cases, the notifications issued under Sections 4(1) and 6(1) with or without the aid of Section 17 and the consequential actions have been nullified by the courts on the ground of violation of the mandatory procedure and the rules of natural justice. The disposal of cases filed by the landowners and others take some time and the resultant delay has great adverse impact on implementation of the projects of public importance. Of course, the delay in deciding such cases may not be of much significance when the State and its agencies want to confer benefit upon private parties by acquiring land in the name of public purpose.

(Emphasis supplied)

44. In the matter of Kamal Trading Private Limited (now known as Manav Investment and Trading Company Ltd.) Vs. State of West Bengal and Others, , Hon"ble the Supreme Court after considering several of its earlier decisions has held that the proceedings under the Act are based on the principles of "eminent domain" and Section 5-A is the only precaution available to a person whose lands are sought to be acquired and it is a minimal safeguard afforded to him by law to protect himself from arbitrary acquisition by pointing out to the authority concerned, inter-alia, that the important ingredient, namely, "public purpose" is absent in the proposed acquisition or the acquisition is mala fide and further that the Act being an expropriatory legislation its provisions will have to be strictly construed.

The Apex Court further held that hearing contemplated u/s. 5-A(2) is necessary to enable the Collector to deal effectively with the objections raised against the proposed acquisition and make a report and the report of the Collector referred to in this provision is not an empty formality because it is required to be placed before the appropriate Government-together with the Collector's recommendations and the record of the case. It is only upon receipt of the said report that the Government can take a final decision on the objections and declaration u/s. 6 has to be made only after the appropriate Government is satisfied on the consideration of the report, if any, made by the Collector u/s. 5-A(2).

Referring to the case of *HPCL. v. Darius Shapur Chennai* (supra), it is further held that the appropriate Government while issuing declaration u/s. 6 of the Act is required to apply its mind not only to the objections filed by the owner of the land in question, but also to the report which is submitted by the Collector upon making such further inquiry thereon as he thinks necessary and also the recommendations made by him in that behalf.

In Paragraph 16, the Supreme Court has further observed that sub-section (3) of Section 6 of the Act makes declaration u/s. 6 conclusive evidence that the land is needed for a public purpose. "Formation of the opinion by the appropriate Government as regards the public purpose must be preceded by application of mind as regards consideration of relevant factors and rejection of irrelevant ones. It is, therefore, that the hearing contemplated u/s. 5-A and the report made by the Land acquisition Officer and his recommendations assume importance. It is implicit in this provision that before making declaration u/s. 6 of the Act, the State Government must have the benefit of the report containing recommendations of the Collector submitted u/s. 5-A(2) of the Act. The recommendations must indicate objective application of mind, U is further observed in Para 25 that the officer should have dealt with objections carefully and not in such a light hearted manner because a heavy responsibility rested on his shoulders.

45. The unequivocal pronouncement by the Supreme Court in the above referred decisions make it loud and clear that objections u/s. 5-A and hearing contemplated therein has to be dealt with by the concerned Collector with utmost sincerity and objectivity and any casual approach has to be construed seriously as the person concerned is likely to be divested of its property and when it concerns agricultural lands in rural areas which is the only means of livelihood, it becomes all the more serious. Keeping these principles in mind, this Court shall now proceed to scrutinize each of the case to find out as to whether the right of hearing and the decision on objection has been properly considered and decided in accordance with Section 5-A of the Act.

46. W.P. (C). No. 279/2012

Radhey Shyam and others Vs. State of Chhattisgarh and others

The petitioners have placed on record copy of the order sheets of the land acquisition proceeding supplied to them as Annexure P-7 (Page 146) in which the Land Acquisition Officer proposed for issuance of notification u/s. 4(1) of the Act and the matter was placed before the Collector who put his signature on 09.08.2011 and thereafter on 10.08.2011, the Land Acquisition Officer registered the proceedings (Pg. 150) and sent the notification u/s. 4(1) for its publication in the official gazette and also to the Directorate of Public Relations, Raipur. This order sheet; of 10.08.2011 available at Page 150 is manually typed whereas Annexure P-11 starting from Page 183 is the certified copy of the entire land acquisition proceedings in which the same order sheet of 10.08.2011 under the signature of the same Land Acquisition Officer is available at Page 187 which is made by computerized typing. In this order sheet (Annexure P-11), further dates of hearing are recorded on 20.09.2011 which refers to objection by the Sarpanch. The next date was fixed on 28.09.2011, however, there is no order sheet of the said date but the matter was taken up on 29.9.2011. On this date, the objection filed by the Sarpanch on behalf of villagers has been rejected without examining the same on merits by mentioning that resolution dated 24.8.2011 of Gram Panchayat Binjkot does not carry the, signature of the third person namely Mr. Dorilal Rathia and further that the names of Panchas and their signatures are also not available. It is categorically mentioned that the objection u/s. 5-A is dismissed. However, this order is passed not by the "appropriate Government" i.e., Collector but by the Sub-Divisional Officer/Land Acquisition Officer himself. The resolution dated 24.08.2011 is available at Page 144 of the Paper Book. On perusal of this document, it appears that in fact the meeting of Gram Sabha had taken place and not that of the Gram Panchayat. Under the C.G. Panchayat Raj Adhiniyam, 1993, Gram Sabha and Gram Panchayats are two different bodies. The Gram Panchayat consists of elected representatives whereas the Gram Sabha consists of all the voters of the Gram Panchayat. In fact, in the opening order sheet available at Page 146 as also at Page 183, it is clearly mentioned that the Gram Sabha had objected to the land acquisition proceedings. The Incharge Officer who opened the order sheet available at Page 183 has referred to a Communication dated 24.01.2011 which emerged from the office of S.D.O. (Revenue) Kharsia to the effect that though the Gram Sabha has objected to the acquisition but since the subject acquisition is for remaining land (Bachat Bhoomi), therefore, the resolution of the Gram Sabha should be ignored.

With these state of affairs, the matter was posted on 05.10.2011 when the Land Acquisition Officer received the draft notification u/s. 6 from the office of DTIC and the same was placed before the Collector for his signatures. The matter was again taken up on 17.10.2011 when the Collector appended his signatures approving the notification u/s. 6 which was sent for publication on 20.10.2011. There is another order sheet of 26.11.2011 which refers to an objection submitted by the villagers of village Binjkot before the Collector which was allegedly received by the Land Acquisition Officer on 26.11.2011, however, the land Acquisition Officer did not proceed to decide the objection on the ground

that the same has been submitted after the period of limitation.

47. In stark contradiction to these order sheets of 05.10.2011 and 26.11.2011 the Respondent/State has submitted order sheet of the Land Acquisition Proceedings as Annexure R-2 in which another order sheet recorded by the same Sub-Divisional Officer (Revenue)-cum-Land Acquisition Officer written purportedly on 05.10.2011 is prepared by manual typewriter. It says that Chandrika Prasad Sidar and 40 other villagers of village Binjkot have submitted an objection before the Collector on 05.09.2011 and thereafter again on 12.09.2011 during Collector's Jan Darshan Programme objecting to the land acquisition proceedings on the ground that when previous round of acquisition for acquiring about 77 hectares of land was initiated, the villagers were assured that no further acquisition shall take place in the village and with the present acquisition of about 144 hectares of land, the village will be left with only 94 hectares of land which is not sufficient for earning livelihood for the villagers of a predominantly tribal village and they are dependent upon agriculture as their only source of livelihood. It is also mentioned that no work is provided to the villagers and because of reduction in area under agricultural operations, the villagers are attracted towards ill habits of theft, drinking, gambling etc. It is also mentioned that the land under acquisition is good agricultural land, therefore, upon acquisition the area under food grain cultivation shall reduce and acquisition of agricultural land should be avoided. The villagers prayed for establishment of power plant of the Private Company on barren land and not on agricultural land. Dealing with the above objections of the villagers, the land acquisition officer writes that adequate compensation shall be paid and rehabilitation policy shall also be adhered to. Therefore, there is no threat to the villagers remaining unemployed. Referring to the reply of DTIC submitted on 29.09.2011, the Land Acquisition Officer further reiterated similar grounds. However, without referring to the Khasra numbers, the land acquisition officer has further observed that the barren land in the village are forest land N which cannot be acquired within time, therefore, for all these reasons, the objection is not worth consideration. It is also mentioned that only 41 agriculturists out of 137 holdings have objected, therefore, for this reason also the objections u/s. 5-A deserve to be rejected. The Land Acquisition Officer thereafter submitted the file for approval to the Collector along-with the draft notification u/s. 6 of the Act and the Collector approved the note sheet by writing "Anumodit" to mean approved.

48. From the discussion of the contents of the entire order sheets of the land acquisition proceedings, it clearly emerges that when the petitioner obtained certified copy of the order sheets, the order dated 10.08.2011 was written in manual typewriter whereas the subsequent certified copy supplied to the petitioners contains the same order sheet in computerized typing. In the certified copy filed by the petitioner, the order sheet of 05.10.2011 nowhere refers to the objection filed by the villagers u/s. 5-A and the decision recorded thereon by the Land Acquisition Officer where as Annexure R-2 filed with the return of the State

contains a manually typed order sheet of the same date i.e., 05.10.2011 in which the same Land Acquisition Officer has supposedly dealt with the objections submitted by the villagers and recommended for rejection of the objections which was merely approved by the Collector i.e., the appropriate Government without applying its mind. The matter does not rest here inasmuch as on 26.11.2011, the same Land Acquisition Officer refers to the same objections submitted by 41 villagers and completely forgetting its earlier manually typed order filed along-with the return as Annexure R-2, records that the objections having been preferred after the period of limitation is not worth consideration. The manner in which the Land Acquisition Officer has conducted the land acquisition proceedings exercising the power of eminent domain is highly condemnable and reprehensible. The Collector i.e., the appropriate Government has also failed to discharge his statutory obligation by not dealing with the objections objectively and passing a reasoned order as to the existence of the public purpose and other objections by the villagers. His act of only approving the decision taken by the Land Acquisition Officer is wholly illegal and arbitrary and more so when this Court has already found that the Land Acquisition Officer is not empowered to deal with the objections in view of the lack of materials to support the pre-requirements of the Notification dated 6th March, 1987 (Annexure R-4). There is yet another startling feature in the said proceeding which is of vital significance because when the manually typed order sheet was written on 05.10.2011 to consider and reject the objections u/s. 5-A of the Act, the villagers were not noticed. The provision contained in section 5-A clearly obligates the Land Acquisition Collector to afford personal hearing to the objectors, which has not been complied with,

49. Considering the principles laid down in the matters of Raghvir Singh Sehravat (supra); Kamal Trading Pvt. Company (Supra) and Hindustan Petroleum Corpn. Ltd. v. Darius Shapur Chennai (supra) this Court has no hesitation in holding that the petitioners have not been afforded any opportunity of hearing before deciding their objections and for all the above discrepancies/anomalies/irregularities of condemnable nature, the provisions contained in section 5-A of the Act has been given a complete go-bye and the land acquisition proceedings from this stage onwards deserve to be quashed.

50. W.P. (C). No. 396/2012

Dharam Singh and 3 others Vs. State of Chhattisgarh and others

W.P. (C). No. 698/2012

Dharam Singh and 4 others Vs. State of Chhattisgarh and others

W.P. (C). No. 680/2012

Ganpat and 3 others Vs. State of Chhattisgarh and others

In these writ petitions, the notification u/s. 4 was published on 24.11.2011 and the objection was submitted on 06.12.2011. In the order sheet dated 05.01.2012

(Annexure P-4) the objection dated 06.12.2011, along-with earlier objections submitted by the Villagers on 21.06.2011 and 09.07.2011 were considered and after seeking reply of the DTIC, the objection was rejected by the Land Acquisition Officer on 18.01.2012 vide Annexure P-6. On perusal of the complete order sheets, it appears that firstly none of the objectors were either noticed or heard before or at the time of deciding the objections and secondly, the objection has been decided by the Sub-Divisional Officer purportedly acting as Land Acquisition Collector, which he could not have done because there is no evidence that he satisfies pre-requisites of the notification dated 06.03.1987, and thus he could not have prepared a report and submitted the same for decision to the appropriate Government and thirdly, there is no mention in the order sheet of 19.01.2012 that the Collector i.e., appropriate Government at any point of time considered the report of the Land Acquisition Officer submitted u/s 5-A(2) of the Act and has taken an independent, objective and reasoned decision to reject the objections. In fact, there is no whisper in the said order sheet that the objections were ever placed before the Collector for decision. Thus, there is absolute violation of the right conferred on the objectors u/s. 5-A of the Act and the same having been decided without giving opportunity of hearing and by an officer who was not competent to do so and further the Collector has not at all taken any decision in the matter, the land acquisition proceeding, on this ground deserves to be quashed from this stage onwards including the notification u/s. 6 of the Act.

51. W.P. (C). No. 781/2011

Ritu Kedia Vs. State of Chhattisgarh and others

W.P. (C). No. 888/2011

Smt. Anjana Kedia Vs. State of Chhattisgarh and others

In these writ petitions also, the order sheets of the Land Acquisition Proceedings filed as Annexure P-18 records that the notices were issued to the holders for submitting objection u/s. 5-A of the Act and the said objections were decided by the Sub-Divisional Officer on 11.10.2010 (At Page 63 of the writ petition). The order sheet nowhere records that at the time of deciding the objections personal hearing was afforded to the petitioner(s) or that notice of date of hearing was issued to each of the objectors. The petitioners have submitted their objection u/s. 5-A of the Act vide Annexure P-4. However, the decision taken on the objection filed as Annexure A-1 along-with an application for taking document on record (I.A. No. 2) filed on 08.02.2011, nowhere records that any of the objectors were present or were personally heard at the time of deciding the objection. More-over, the Land Acquisition Officer purportedly acted as Land Acquisition Collector, though there is no proof that he satisfies pre-requirements of notification dated 06.03.1987 and proceeded to decide the objections himself rather than making a report to the Collector i.e., the appropriate Government. Since the decision has to be taken by the Collector i.e., the appropriate Government and not by the Sub-Divisional Officer or the Land Acquisition

Collector, the impugned land acquisition proceeding from the stage of hearing on Section 5-A objection onwards including the award deserves to be quashed.

52. W.P. (C). No. 374/2012

Hernial and 55 others Vs. State of Chhattisgarh and others

This writ petition has been preferred by 56 villagers of village Siladehi, Tehsil Champa District Janjgir Champa wherein Section 4 notification was published on 28.07.2010 for proposed public purpose of establishment of 1320 MW Power Plant to be constructed by the Private Company, respondent No. 8 M/s. M.B. (Moser Baer) Power Chhattisgarh Limited. The objections submitted by the villagers u/s. 5-A of the Act appears to have been decided on 29.11.2010. However, the order sheet of the said date does not record that any of the objectors was present at the time of hearing. The report prepared by the Land Acquisition Officer purportedly acting as Land Acquisition Collector has been filed as Annexure P-6 and this report dated 29.11.2010 also fails to record that personal hearing was provided though it refers to the objections submitted by Sarpanch Association of Janpad Panchayat Bamnidih, the members of Zila Panchayat and 385 other objections by the villagers. The report records the reply submitted by the DTIC but no independent finding has been recorded as to the nature of "public purpose" in establishment of 1320 MW power plant by Private Company which is mentioned as industrial purpose. The order sheet of 29.11.2010 does not bear signature of the Collector i.e., appropriate Government and there is no material in the record that the Land Acquisition Officer satisfied the pre-requisites of the notification dated 06.03.1987 so as to enable him to function as Land Acquisition Collector. Thus, in this case also, it can be concluded that firstly the Land Acquisition Officer could not have acted as Land Acquisition Collector to hear the objections and make a report to the appropriate Government i.e., Collector. Secondly, the order sheet of 29.11.2010, on which, the Section 5-A objection was considered for making a report, nowhere indicates that personal hearing was afforded at the time of making report and thirdly, the decision taken by the Collector i.e., the appropriate Government has not been submitted by the Respondent-State along-with the return. Therefore, for all these reasons, this Court has no hesitation in holding that proper and adequate opportunity of hearing has not been afforded to the petitioners before making the report by the Land Acquisition Officer who was otherwise also not competent to perform the functions of Land Acquisition Collector and since there is no decision placed on record to indicate that the Collector i.e., the appropriate Government has applied its independent mind objectively for taking a reasoned decision to decide the objections u/s. 5-A(2) of the Act, the land acquisition proceedings on and after the stage of section 5-A of the Act is vitiated and it deserves to be quashed on this ground. Though award has been passed in this case, but there is nothing to indicate that possession has been taken. On 29.02.2012, this Court by interim order directed the parties to maintain status quo with regard to the subject lands, therefore, the land acquisition proceeding

on and after the stage of Section 5-A of the Act, including the award is vitiated and quashed.

53. W.P. (C). No. 561 of 2012

Gayatri Prasad and 5 others Vs. State of Chhattisgarh and others

This writ petition has been preferred by six villagers of the village Siladehi challenging the land acquisition proceedings initiated by the Respondent State for construction of 1320 M.W. Power Plant by respondent No. 8 M/s. M.B. (Moser Baer) Power Chhattisgarh Limited, a Private Company. In this case, the notification u/s. 4(1) of the Act was published on 30.06.2010. After issuance of the Notification, 90 individual objections and two numbers of objections by group of villagers were submitted. The land acquisition officer, purportedly acting as Land Acquisition Collector, reproduced the contents of the objections submitted by the villagers and the reply filed by the DTIC. However, while making the report, the Land Acquisition Officer mentioned in Para 10 thereof in just two lines that in view of the reply submitted by the DTIC, the objections deserve to be rejected. The report nowhere records any finding that as to why the objections have no merit. After this report was made on 23.10.2010, the matter was placed before the Collector i.e., "appropriate Government", however, subsequent order sheet of 29.10.2010 filed as Annexure P-6 at Page 74 nowhere indicates that the Collector has taken a decision u/s. 5-A(2). In fact, in course of hearing, learned counsel for the petitioner pointed out that certified copy of the order sheet dated 29.10.2010 at Page 74 (Annexure P-6) nowhere indicates that Collector even considered the report made by the Land Acquisition Officer, however, the same order sheet filed by the State at Page 68 with the return would demonstrate that words "Prativedan Se Sahmat" to mean "agreed with the report" were inserted later on just to make out a case that the appropriate Government i.e., Collector has in fact taken a decision u/s. 5-A(2). When the petitioner argued this aspect of the matter, learned Additional Advocate General sought opportunity to file an affidavit of the District Collector. After the matter was reserved, affidavit of the District Collector sworn on 05.8.2012 has been submitted before this Court on 07.08.2012 in which the Collector has flatly denied that when he put his signature on the order sheet dated 29.10.2010, the said interpolated part was available. In other words, the District Collector supports the contention of the petitioners that the said words "Prativedan Se Sahmat" have been interpolated subsequently without his knowledge and has requested this Court to read the order sheet dated 29.10.2010 by omitting the words "Prativedan Se Sahmat". It further stated in the affidavit that a show cause notice has been issued to the suspected persons and a departmental enquiry is in contemplation.

54. On the basis of this affidavit, this Court has no reason to take a different view of the matter and the only conclusion which emerges from the record together with affidavit of the District Collector is that the "appropriate Government" i.e., the Collector has never seen the report submitted by the Land Acquisition Officer and no decision whatsoever was taken by the appropriate

Government u/s. 5-A(2) of the Act. This is apart from the fact that in this case also no material has been placed before this Court to substantiate that the Land Acquisition Officer fulfilled the criteria/pre-requisites mentioned in the notification dated 06.03.1987 empowering him to function as Land Acquisition Collector. Therefore, at the first instance, the so called hearing made by the Land Acquisition Officer on the objections of the villagers and the subsequent report prepared by him is without any authority of law and as a result, this Court would conclude that Section 5-A proceedings have not at all been taken in the present case. Though the award has already been passed in this case, but since an interim order is operating in favour of the petitioners directing maintenance of status quo with respect to the subject land and the return of the State Government does not indicate that after passing of the award, possession has been taken, this Court is of the considered opinion that for non-compliance of Section 5-A of the Act, the entire Land Acquisition Proceedings on and from the stage of Section 5-A deserves to be quashed.

VIOLATION OF PROVISIONS OF PANCHAYAT (EXTENSION TO THE SCHEDULED AREAS) ACT, 1996

55. It has been urged by the petitioners of W.P. (C). No. 279/2012 that village Binjkot being admittedly a part of Scheduled Area within the meaning of Article 244 read with Fifth Schedule of the Constitution, therefore, by virtue of Sections 3, 4 & 5 of the Act 1996 read with Article 243-M of the Constitution, the subject acquisition is void on account of failure to consult and seek concurrence from the Gram Sabha. Per contra, the learned counsels for the respondents would argue that interpretation put-forth by the petitioner to the provisions of Sections 3, 4855 of the Act, 1996 is misconceived and there is no such legal requirement of seeking prior concurrence of the Gram Sabha.

56. Similar argument as has been raised by the petitioners was raised before the M.P. High Court in the matter of Narmada Bachao Andolan Vs. State of Madhya Pradesh wherein the Division Bench of the M.P. High Court has rejected the said argument in the following manner.

19. We find that after the PESA Act, the legislature of the state of Madhya Pradesh has by M.P. Act 43 of 1997 inserted chapter XIV-A titled "Special provisions for Panchayats in the Scheduled Areas" in Madhya Pradesh Panchayat Raj Avam Gram Swaraj Adhiniyam, 1993 (for short the Adhiniyam, 1993) and thereafter also amended some of the provisions of chapter XIV-A by the M.P. Act-5 of 1999 and the M.P. Act of 2001. On a detailed examination of the provisions of sections 129A to 129F in chapter XIV-A of the Adhiniyam, 1993 as amended, we do not find therein any provision requiring consultation with the Gram Sabha or the Panchayats at the appropriate level before acquisition of land for a development project or before rehabilitation and re-settlement of persons affected by a development project in Scheduled Areas, and the vires of the special provisions for Panchayats in the Scheduled Areas in chapter XIV-A of the Adhiniyam have also not been challenged in this writ petition. The State

Legislature, in our considered opinion, ought to have made a provision in the Adhiniyam, 1993 in accordance with section 4(i) of the PESA Act providing for consultation with the Gram Sabha or Panchayats at the appropriate level before acquisition of the land in the village for development projects or before re-settlement and rehabilitation of persons affected by such projects but in the absence of any special provision in the Adhiniyam, 1993 requiring consultation with the Gram Sabha or Panchayats at the appropriate level before making acquisition of land in the Scheduled Areas for development projects, the court cannot issue a direction or mandamus to Respondent No. I to consult the Gram Sabha before acquisition of land or before rehabilitation and re-settlement of persons affected by a development project in Scheduled Areas nor can the Court hold that the acquisitions of lands in Scheduled Areas without consultation with the Gram Sabha in accordance with section 4(i) of the PESA Act are null and void. Moreover, as has been held by this Court in Naresh Sing and ors. V. Union of India and ors. (supra), the embargo in section 4(i) of the PESA Act is not on Parliament but on the Legislature of a state and therefore section 4(i) of the PESA Act does not apply to land acquisition under a Central Act namely the Land Acquisition Act, 1894 unless a provision in the law is made by the State Legislature that land in Scheduled Areas will not be acquired under the Land Acquisition Act, 1894 without consultation with the Gram Sabha or the Panchayats at the appropriate level as provided in Section 4(i) of the PESA Act.

In view of the above and having perused the relevant provisions of law, this Court is not in a position to take any different view of the matter, therefore, the argument raised by the petitioners on this ground deserves to be rejected.

CHALLENGE AFTER PASSING OF THE AWARD

57. W.P. (C). Nos. 781/2011, 888/2011, 374/2012 & 561/2012 have been preferred after passing of the award. In these cases, respondents have argued that the challenge to the land acquisition proceedings is not sustainable after the award has been passed. Countering this submission, petitioners would submit that there is no such delay in filing the writ petition which would disentitle them to invoke jurisdiction under Article 226 of the Constitution of India. In W.P. (C). No. 781 & 888/2011, notification u/s. 6 was published on 13.10.2010 and the notice u/s. 9 of the Act was issued to the petitioners on 22.10.2010 seeking their appearance on 08.11.2010. The petitioners applied for the certified copy of the land acquisition proceedings on 10.11.2010 which was kept pending by the Copying Section and the petitioners were made to run from pillar to post. Keeping the application for obtaining certified copy pending, the award was passed on 23.12.2010, but since the certified copy was still not provided, petitioner(s) lodged a complaint on 06.01.2011, Annexure P-14 in W.P. (C). No. 888/2011 to the Collector highlighting the injustice that even certified copy is not provided to them. Probably at the intervention of the Collector, the certified copy was supplied on 21.01.2011 and the petition was thereafter filed in the month of February, 2011.

58. In W.P. (C). No. 374/2012 & W.P.C. No. 561/2012 the award was passed on 11.05.2011. However, there is no mention of the fact in the entire return of the State Government or for that matter in the return filed by respondent No. 8 CSIDC that possession has been taken over from the petitioner(s) and the beneficiary of the acquisition i.e., the Private Company has been handed over the possession of the subject land. In both these cases, this Court has granted interim relief to the petitioner(s) directing the parties to maintain status quo in the matter.

59. In the matter of Royal Orchid Hotels Limited and Another Vs. G. Jayarama Reddy and Others, , Hon"ble the Apex Court while dealing with the challenge to the land acquisition proceedings after 12 years of acquisition held thus in paragraph 25:

25. Although the Framers of the Constitution have not prescribed any period of limitation for filing a petition under Article 226 of the Constitution of India and the power conferred upon the High Court to issue to any person or authority including any Government, directions, orders or writs including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari is not hedged with any condition or constraint, in the last 61 years the superior courts have evolved several rules of self-imposed restraint including the one that the High Court may not enquire into belated or state claim and deny relief to the petitioner if he is found guilty of laches. The principle underlying this rule is that the one who is not vigilant and does not seek intervention of the Court within reasonable time from the date of accrual of cause of action or alleged violation of the constitutional, legal or other right is not entitled to relief under Article 226 of the Constitution. Another reason for the High Court's refusal to entertain belated claim is that during the intervening period rights of third parties may have crystallized and it will be inequitable to disturb those rights at the instance of a person who has approached the Court after long lapse of time and there is no cogent explanation for the delay. We may hasten to add that no hard and fast rule can be laid down and no straightjacket formula can be evolved for deciding the question of delay/laches and each case has to be decided on its own facts.

(Emphasis Supplied)

After so observing, the Supreme Court proceeded to quash land acquisition proceedings.

60. In Swaika Properties (P) Ltd and another v. State of Rajasthan and others 2008 4 SCC 696 (Para 16) relied upon by the respondents, Hon"ble the Supreme Court dismissed the petition on the ground of delay and laches because possession was already taken over. However in the above referred 4 writ petitions wherein the award has been passed, possession has not been taken over in any of the matter, therefore, the judgment in Swaika Properties (supra) rather than assisting the respondents, it evolves a principle that the petition filed after passing of the award may not be thrown out when possession has not been

taken over. This is apart from the fact that in W.P. (C). 781/2011 & 888/2011 the petitioners were deliberately and malafidely denied certified copy of the proceedings so that they may not prefer any writ petition before passing of the award.

61. In Royal Orchid Hotels Limited (supra) the Supreme Court has already held that no straight jacket formula can be laid down and each case has to be dealt with on its own facts and merits to decide as to whether the petition can be thrown out on the ground of delay and laches. Having considered the entire facts and circumstances of the case and the law laid down by the Supreme Court in the matter of Swaika Properties (P) Ltd (supra) and Royal Orchid Hotels Limited (supra) this Court is of the considered opinion that since it has already been found that the acquisition is not for any public purpose but it is for the Private Company, Section 5-A provision has not at all been adhered, the SDO (Revenue) considering the objection was not empowered to act as Land Acquisition Collector, present cases do not suffer from any such inordinate delay and laches so as to dismiss them on the ground of delay and laches without entering into the merits of the petitions.

62. For the foregoing reasons, this Court would record the conclusions and the decision in the writ petitions in the following manner:

(i) The Land Acquisition Proceedings in all the writ petitions have been drawn for the benefit of Private Power Companies and not for "public purpose". The acquisition could not have been made under Part-II of the Land Acquisition Act, 1894. In absence of any material placed before this Court that any of the SDO/ Land Acquisition Officers (LAO) satisfies the pre-requirements of State Governments Notification dated 06.03.1981 so as to entitle them to function as Land Acquisition Collector, hearing of the objections u/s. 5-A of the Act and the decision taken by such S.D.O./LAO or the report made by them to the Collector i.e., the "appropriate Government" is without authority of law. Consequently the entire Land Acquisition Proceedings including the hearing of objections u/s. 5-A(2) and the decision thereon as well as the final award being vitiated deserves to be and are quashed.

Even though the award has been passed in W.P. (C). No. 781/2011 & W.P. (C). 888/2011, but since the award was passed while keeping the petitioners' application for obtaining certified copy pending and possession has not yet been taken over, the proceeding including the award is quashed. Similarly, in W.P. (C). No. 374/2012 & W.P. (C). No. 561/2012, challenge has been made to the notification u/s. 4 & 6 of the Act and the Award was passed subsequently during the pendency of the writ petition, but since no "public purpose" is involved in the acquisition, and the petitioners were not noticed and heard u/s. 5-A(2) of the Act and the SDO was not competent to decide the objections, this Court deems it proper to quash the notifications as well as the award to complete justice in the matter.

(ii) That the petitioners have not been granted proper and adequate opportunity of hearing by the concerned SDO/LAO in each of the case before taking a decision or making a report to the "appropriate Government"; the SDOs/LAOs have not noticed the petitioners nor afforded any opportunity of hearing. Therefore, on this ground the Land Acquisition Proceedings deserve to be and are quashed from the stage of Section 5-A proceeding.

(iii) For making acquisition for Private Power Companies, acquisition of prime agricultural land should be avoided and Rule 4 of the Land Acquisition (Companies) Rules, 1963 shall be followed by the State, if any new acquisition proceedings are drawn.

(iv) In view of Section 44-B of the Act, the land cannot be acquired for a Private Company for any other purpose than the purposes mentioned u/s. 40(1)(a) of the Act.

(v) The land acquisition proceeding cannot be quashed on the ground of violation of Panchayat (Extension to Scheduled Areas) Act 1996;

(vi) In W.P. (C). No. 561/2012, Collector-Janjgir Champa has sworn in an affidavit proving the petitioners-allegations of interpolation in the order sheet dated 29.10.2010. The concerned Collector has stated that show-cause notices have been issued to the erring employees and a departmental enquiry is in contemplation. This Court directs that the said departmental enquiry be constituted against the person interpolating with the official records and the Action Taken Report (AIR) be submitted before this Court within a period of 4 months from today. The Registry is directed to register a separate M.C.C. in this regard and place it for hearing before this Court in the first week of October, 2012.

In the result, all the writ petitions are allowed in the above stated terms with cost of Rs. 5000/- to each of the petitioners to be paid by the Respondent State.