
(2010) 11 OHC CK 0050

In the Orissa High Court

Case No : Writ Petition (C) No's. 11607 of 2007, 7163, 7278, 7279, 7360, 8636, 10325 and 12948 of 2008 and 6863 of 2009

Rajiv Pujari and Others

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 16-11-2010

Acts Referred:

Companies (Acceptance of Deposits) Rules, 1975 — Rule 2
Companies Act, 1956 — Section 12, 12(2), 13, 13(2), 2
Constitution of India, 1950 — Article 14, 166(3), 19(1), 21, 226
Contract Act, 1872 — Section 17
Land Acquisition (Companies) Rules, 1963 — Rule 3, 3(2), 4, 4(1), 4(2)
Land Acquisition Act, 1894 — Section 11, 12, 16, 18, 23
Orissa Government Land Settlement Rules, 1983 — Rule 5
Orissa Industrial Infrastructure Development Corporation Act, 1980 — Section 15
Right to Information Act, 2005 — Section 6

Citation : (2010) 2 ILR (Ori) 1008 : (2011) 1 OLR 130 Supp

Hon'ble Judges : V. Gopala Gowda, C.J.;B.P. Das, J

Bench : Division Bench

Judgement

V. Gopala Gowda, C.J.—These petitions have been filed by the owners of the land acquired by the State Government in favour of the opposite party Anil Agarwal Foundation (hereinafter in short called as "Foundation") for establishment of a University in exercise of its eminent domain power under the provisions of Part-VII of the Land Acquisition Act, 1894 (hereinafter called as the "L.A. Act" in short). The public interest litigation petitions have been filed both on behalf of the land owners who have no access to justice and also on behalf of the public of the locality of the lands whose public interest is affected by violating Rule of Law in acquiring vast tract of both Government, Temple and private lands in favour of the Foundation. They were listed and heard together by consent of the learned Counsel for the parties and are disposed of by this common judgment. With a view to avoid repetition of pleadings and rival legal contentions urged on behalf of the parties, we would briefly state the necessary facts and advert to the pleadings and legal submissions made on behalf of the parties while answering

the points that are framed in these cases.

2. The facts stated in all these writ petitions are almost the same and the impugned notifications have been challenged on identical grounds. It is therefore not necessary to refer to the facts of all the writ petitions. We have therefore, referred to the facts of W.P.(c) No. 7163 of 2008 & W.P.(C) No. 10325 of 2008.

3. Shorn of unnecessary details, the brief facts of the case are that on 23.6.2006 one Mohit Kumar Rana, Principal, A.T. Kearney Limited filed an application before the State Government stating that M/s. Vedanta Resources Limited is contemplating to set up a University in Orissa to impart education in undergraduate and post-graduate courses in Engineering, Medicine, Management, General Science and Humanities etc. It was further stated in the application that the Group had given a presentation to the Hon'ble Chief Minister, Orissa during April, 2006. Their team after visiting different sites in Orissa have selected a site on the outskirts of Puri on the Puri-Konark marine drive to be the place ideal for establishment of the University. Therefore, it was, inter alia, prayed that Government of Orissa should make available 15,000 acres of contiguous land around Nuanai, in the district of Puri in Bhubaneswar-Puri-Konark marine drive. It was further prayed that the Government of Orissa should coordinate the land acquisition process by appointment of a Special Land Acquisition Officer. The Group prayed that they require 1500 acres of land for Phase-I to be acquired by September, 2006 and the balance by December, 2006. Thereafter, a Memorandum of Understanding was signed between Government of Orissa and Vedanta Foundation on 19.7.2006 and Government of Orissa confirmed the availability of contiguous land of about 8000 acres and to make endeavour to provide an additional contiguous land and other facilities as required by the Foundation. It is the case of the petitioners that a Private Limited Company incorporated in the name and style of Sterlite Foundation changed its name to Vedanta Foundation u/s 25 of the Companies Act of 1956 and accordingly fresh certificate of incorporation consequent on change of name was issued in July, 2004. After signing of the MOU, necessary steps were taken by the State Government for allotment of the land to the Foundation and the Vice President of the Vedanta Foundation was directed to deposit 20% of the estimated investment cost which was subsequently reduced to 10% without any basis and reasoning and necessary direction was issued to the Collector, Puri to obtain administrative approval of the project from the Higher Education Department and to produce the approval along with the proposal before the Government. In the meantime the opinion of the Law Department was sought on the questions (a) whether the Foundation is an educational foundation? and (b) whether the land is required to be acquired for public purpose? The Law Department opined that Sections 4, 5 and 6 of the L.A. Act provide that the Government can acquire land for any public purpose or for a Company and such company would mean as per definition contained in the Companies Act, 1956 (hereinafter called "the Act, 1956") a company incorporated under the Companies Act, a society registered under the Societies Registration Act or a Co-operative Society. Law Department

further opined that the file does not indicate that "Vedanta Foundation" is a company, or a Society under the Societies Registration Act or a Co-operative Society. With the aforesaid opinion the Law Department required the Administrative Department to find out the legal status of Vedanta Foundation and whether it comes within the purview of Sub-clause (vi) of Clause (f) of Section 3 of the L.A. Act. Thereafter the Administrative Department, i.e., the Revenue and Disaster Management Department again submitted the file to the Law Department for opinion drawing its attention to the certificate of incorporation of the Foundation under the Companies Act, the amended certificate on name and the Memorandum of Association of the Company. This time the Law Department opined that land can be acquired for a private company if such acquisition comes within the purview of Clause (a) of Sub-section (1) of Section 40 of the Land Acquisition Act which provides that acquisition of land can be done for erection of dwelling houses for workmen employed in the Company or for the provisions of amenities directly connected therewith and considering the proposal of Vedanta with reference to the aforesaid provision, it further opined that said requirement does not fall within the purview of Clause (a) of Sub-section (1) of Section 40 of the L.A. Act. Law Department further observed that land can be acquired for the proposed educational scheme under the Act if the appropriate Department of the Government sponsors a Scheme to carry out that. Alternatively land can be acquired for an educational scheme sponsored by a Society but with the prior approval of the Government. So observing, Law Department opined that under the Act, land can be acquired for public purpose provided Government sponsors to carry out an educational scheme or for a registered society with prior approval of the Government. Alternatively, it also opined that the Administrative Department may verify if acquisition of land can be made u/s 15 of the Orissa Industrial Infrastructural Development Corporation Act, 1980. After the aforesaid opinion was received, the administrative department was of the view that the second option to go through IDCO was not feasible and suggested to consider as to whether Higher Education Department will sponsor and own the project directly and whether it would be done through a Society to be framed by the Higher Education Department. After consideration of the above, it was decided to explore the alternative of the Private Company to be converted to a public company on which, the views of the Law Department was again sought. This time the Law Department opined that land can be acquired for a "Public Company" under the Land Acquisition Act in accordance with Part VII. Thereafter the company is said to have changed its status from Private Company to Public Company with the change of name as Anil Agarwal Foundation. Thereafter the State Government issued notification u/s 4(1) of the Land Acquisition Act for acquisition of land on behalf of Anil Agarwal Foundation for setting up of Vedanta University. The case of the petitioners is that the proposal for acquisition of land was initially made by Vedanta Resources Limited whereas the MOU was signed by the Vedanta Foundation but, on and from 6th September, 2006 Vedanta Foundation no more existed and Anil Agarwal Foundation came into being. Even though no valid document was produced before the State Government with

regard to conversion of the status of the company from "private" to "public", the State Government issued notifications u/s 4(1) of the Act treating the company as a public company proposing to acquire the lands in its favour to establish a University. On the complaint of some of the petitioners before the local M.L.A. that the company not being a public company has made such a claim, the MLA approached the Union Minister to know the exact status of the company who in turn sought the required information from the Registrar of Companies. By letter dated 7th May, 2008, Mr. D.K. Gupta, Registrar of Companies, Maharashtra intimated the Media Advisor to Minister of State for Rural Development, Government of India as under:

Kindly refer to your letter dated 7th May, 2008 regarding Anil Agarwal Foundation. In this connection, it is stated that Sterlite Foundation, a Section 25 company was incorporated on 12.5.2004. A copy of certificate of incorporation, Memorandum of Association and Articles of Association is enclosed herewith. Thereafter the company has changed its name from Sterlite Foundation to Vedanta Foundation. A copy of Fresh Certificate of Incorporation consequent upon Change of name is also enclosed herewith. Anil Agarwal Foundation had filed its latest Annual Return (Form 21A) made upto 24.9.2007 and latest Balance Sheet (Form 23AC and 23 ACA) as at 31.3.2007 which are enclosed herewith. It is further mentioned that this is a Section 25 Company as per Section 25 of the Companies Act, 1956 and not a Public Limited Company.

(Emphasis supplied)

4. It is alleged by the petitioners that Laxmi Narayan Agarwal, one of the Directors of Vedanta Foundation though expired on 2.4.2006, the resolution dated 23rd November, 2006 passed for the conversion of the company from "private" to "public" company, the said Laxmi Narayan Agarwal has been shown as one of the Directors of Anil Agarwal Foundation which demonstrates the mala fide intention of the company to obtain conversion so as to have eligibility for acquisition of land under the provisions of L.A. Act. The further allegation of the petitioners is that though the certificate from the competent authority with regard to change of status has not been produced, yet the State has considered the Anil Agarwal Foundation as a Public Company and proceeded to acquire lands on its behalf for establishment of Vedanta University. Referring to Clause 6 of the Memorandum of Understanding, the petitioners would submit that under the said clause complete autonomy is sought to be given to the Vedanta University in the matter of administration, admission, fee structure, curriculum and faculty which is not permissible. In view of the aforesaid clause, the State Government would not have any control over the functioning of the university which may at its discretion charge such fees etc. which the students of State of Orissa can never afford. It is the further case of the petitioners that Clause 6(ix) of the MOU requires that people residing within 5 K.M. radius from the University boundary shall lose their fundamental rights relating to development of their residential houses. They shall have to obtain permission from the Company for the purpose

of any development of their residential houses. The allegation of the petitioners is that the University in question has neither been sponsored by any Ors. University of our State nor has it been formed under any scheme of the Universities Act. Though the State Government had earlier signed MOU with Vedanta Foundation, again it has signed an agreement with Anil Agarwal Foundation on 31.7.2007. Referring to the quantum of land and area of the various reputed universities in the country like Utkal University, Jawaharlal Nehru University, IITs and abroad, the petitioners contend that the requirement of land put forward by the Company in question is very much excessive. It is the case of the petitioners that the real purpose of requiring such vast extent of property cannot be said to be only for the purpose of the University; the real purpose sought to be achieved has been masked. There is some hidden agenda for the beneficiary company. Land acquisition being an ex proprietary legislation, the requirement of transparency is a paramount consideration mandated by the Statute. It is the case of the petitioners that 80% of the lands sought to be acquired is agricultural land and the owners of the land and their family members depend on the said land for their livelihood. It is contended that the Company is not at all a public company. So the declaration made by the company as well as the authorities is nothing but a colourable exercise of power with the mala fide intention to grab the agricultural properties of the land owner petitioners and Ors. land owners. It is further contended that as per Section 3(f)(vi) of the L.A. Act land acquired for educational purposes which is a public purpose is to be sponsored by the Government or by any authority established by the Government; or with the prior approval of the appropriate Government or by the local authority; or by a society registered under the Societies Registration Act or any Ors. corresponding law for the time being in force in a State or a co-operative society within the meaning of any law relating to co-operative societies for the time being in force in any State. Anil Agarwal Foundation which is a company registered under the Companies Act does not fall under any of the categories of the authorities for whom a valid land acquisition process can be launched to acquire land for serving the aforesaid public purpose. Therefore, the acquisition of land for M/s. Anil Agarwal Foundation for setting up an educational institution directly falls foul of the aforesaid legal stipulations in Section 3(f)(vi) of the Act. Public purpose has been defined in Section 3(f) of the Act which says that "public purpose" does not include acquisition of land for companies. The further contention of the petitioners is that the present acquisition of vast tract of lands has been done by the State Government under the provisions in Chapter VII of the L.A. Act which deals with acquisition of land for the Companies. The Land Acquisition Act being an ex-proprietary legislation, the provisions of Chapter VII read with Land Acquisition (Companies) Rules, 1963 is to be strictly complied with by the State Government. Section 39 of the L.A. Act provides for previous consent of appropriate Government and execution of agreement by the beneficiary Company in favour of the State Government. Section 40 of the L.A. Act mandates that such consent shall not be given unless the appropriate Government be satisfied either on the report of the Collector u/s 5A, Sub-section

(2) or by an enquiry held as provided therein. Rule 4 of the Land Acquisition (Companies) Rules, 1963 mandates the procedure of enquiry. It is the case of the petitioners that admittedly no such enquiry has been conducted by the Collector under Rule 4(1) of the Land Acquisition (Companies) Rules, 1963 in absence of which issuance of notification under Sections 4 and 6 of the L.A. Act is bad in law. It is contended by the petitioners that from the information furnished by the State Government under the Right to Information Act it appears that no such enquiry has been conducted under Rule 4 of the Land Acquisition (Companies) Rules, 1963 prior to issuance of the notification. Hence the notifications are liable to be struck down for non-compliance of the mandatory provisions of Chapter VII of the L.A. Act and Rules.

5. Gopabandhu Daridranarayan Seva Sangha, a society registered under the Societies Registration Act, 1860, the first petitioner in W.P.(C) No. 10325 of 2008 and others have questioned the legality and validity of the acquisition notifications published under Sections 4 and 6 of the L.A. Act on various grounds including the ground that acquisition of vast tract of land in favour of the Foundation, which is actually a "private company" and subsequently claimed that it has converted to a "public company" which falls within the definition of Section 3(1)(iv) of the Act, 1956 and its conversions is not permissible in law. It could not have been converted to a public company u/s 25 and registered u/s 12 of the Act. Therefore, the requisition made by the Vedanta Foundation to the State Government to acquire land in its favour by its representation dated 23.6.2006 for establishing non-existing multi discipline University is a fraud played upon it and its registration, if any, as a public company after conversion u/s 25 read with Sections 2(23), 12(2)(b), 13(2) and 27(2) of the Companies Act and the regulations framed there under. A joint reading of Sections 2, 3, 12, 13, 21, 22, 23, 25, 27, 29, 568, 570, 573 and 617 of the Act, 1956 along with the Companies Regulations, 1956 (hereinafter referred to as "the Regulations" in short) would indicate that the details of the objects, formation and Ors. particulars regarding a "Company" registered u/s 25 of the Act with liabilities not limited by any share capital but limited by "Guarantee". The ceiling/maximum of liability of any member of the present "Company" registered u/s 25 of the Act is Rs. 5000/-only. Therefore, the Foundation is not a public company as pleaded by it before the State Government for acquisition of lands in its favour for establishment of a University. The certificate u/s 25 of the Act of 1956 obtained by the Foundation on the basis of Memorandum and Articles of Association attracts the mischief of fraud on public power of the State Government and it does not satisfy the mandate of Section 25 read with Sections 2, 3, 12(2)(b), 13(2) and 27(2) of the Act, 1956 and regulations including the statutory annexure annexed thereto. "Sterlite Foundation" first altered its name to "Vedanta Foundation" and still later further altered its name to "Anil Agarwal Foundation". The registration of the company purporting to have converted from "private limited company" to "public company" was and is a fraud on the Companies Act, inter alia, as the contents of the Memorandum of Association and

Articles of Association were/are repugnant to the mandates of the Companies Act read with the Regulations. The Foundation having indulged in such illegalities and having fraudulently represented facts to the State Government that "Vedanta/ Anil Agarwal Foundation was a Private Limited Company under the Act (which category of company it never was and can never be), the said illegal "body corporate" indulged in further fraud on the Act, 1956, the U.G.C. Act and the Land Acquisition Act and the Regulation by carrying out a conversion of "Company" registered u/s 25 of the Act to a so called "public limited company", which is not legally permissible under the aforesaid Acts and Regulations. The entire exercise on the part of the Foundation and the State Government is contrary to the mandate of the law governing the field for acquisition of land. Further it is stated that the Memorandum and Articles of Association of the Foundation continued to have the same irremediable infirmities in it and do not satisfy the mandatory requirements of the aforesaid provisions of the Companies Act as its incorporation itself by less number of persons that are required to register a company u/s 25 of the Act, 1956 and the stipulation regarding membership is contrary to the provisions of the Act. The Foundation's registration as a limited company was through unusual means projecting itself as a public limited company by misrepresentation of facts in a designed way to the State Government with an ulterior motive to avail the benefit of the provisions of the L.A. Act to acquire the vast extent of lands for establishment of a non existent University, thereby it has played fraud on the State Government. A company registered u/s 25 of the Act enjoys several privileges of which a private limited company does not have. Such company is partially or fully exempted from the operation of Sections 147, 160 (1) (aa), 166(2), 171(1), 177, 93, 209 (4A), 219, 255, 256, 257, 259, 263, 264 (1), 285, 292, 299, 301 and 303 (2) of the Act, 1956. The structure and nature of the company is pre-determined at the time of grant of license and registration u/s 25 of the Act and it is stated that no such conversion is granted in its favour as it has failed to comply with certain aspects as mentioned in the letter dated 22nd November, 2006 issued by the Regional Director of Company Affairs.

6. There is no occasion for the Foundation to get conversion of a company by guarantee u/s 25 to be converted into a public limited company to come within the definition u/s 3(1)(iv) of the Act, 1956. In collusion with the Ors. opposite parties, the Foundation succeeded in perpetrating the fraud and proceeded to sign an illegal, non est and void MOU dated 31.7.2007 after final notifications were published with the State of Orissa for patently illegal purposes and the same has been implemented by the State Government in gross violation of the mandatory provisions of Part VII of the L.A. Act read with Companies Rules. The impugned decision of the State Government to acquire vast extent of lands of good number of villages on the basis of the Memorandum of Understanding, the acquisition proceedings from the initial stage on the basis of the illegal agreement is wholly without any authority of law and, therefore, the impugned notifications and consequential action taken by the State Government and its

offices are liable to be quashed.

7. Counter affidavit has been filed by the State Government through the Collector in each of the cases. The beneficiary company has also filed counter affidavit in each of the writ petitions traversing the petition averments.

8. In the Counter Statement filed on behalf of opposite party Nos. 1 to 3, State Government in the PIL petition W.P.(C) No. 10325 of 2008, it has been stated that the public interest litigation is not maintainable in view of the judgment of this Court in W.P.(C) 8636 of 2008. Petitioner No. 1 and 2, who claim that their lands have been acquired have never filed objections u/s 5-A of the Land Acquisition Act for which the writ petition is not maintainable. It is further stated that after deposit of money by the Foundation with the Special Land Acquisition Officer, the acquisition file was opened on 18.11.2006, after which Section 4 notification was made and public notice was issued. The objections that were received were heard and disposed of. Report u/s 5-A(2) was sent indicating the number of objections received from some villages and no objections were received from the Ors. villages. Thereafter the matter was placed before the Government. On 12.4.2007, the Government considered the report of the Collector u/s 5-A(2) and examined the matter for entering into the agreement and steps were taken for entering into an agreement in a Standard Form. The agreement was entered deleting Clause 9 and 10. The aforesaid agreement has been executed and notified on 31.7.2007. In the counter affidavit the averment made in the writ application have been denied. It is stated that allegation of collusion and fraud without any material is not admissible and therefore such allegation is denied. There was no collusion, illegality or fraud bereft of details is not admissible. The allegation about validity of agreement u/s 41 of the Land Acquisition Act and notification under Sections 4 and 6 are denied. It is further stated that land belonging to the Government can be transferred by the State Government on consideration of public interest for immense use of the public and therefore the petitioners in the PIL writ petitions have no locus standi to question the same.

9. Counter affidavit has also been filed on behalf of the State Government and the various authorities of the State, opposite party Nos. 1 to 5 traversing the petitioner's averments in W.P.(C) No. 7360 of 2008. It is stated that Vedanta Resources submitted representation to the Hon'ble Chief Minister of Orissa during the month of April, 2006 for setting up a University at Puri which will have Under Graduate, Post Graduate Courses in Engineering, Medicines, Management, General Sciences and Humanity etc. Thereafter memorandum of understanding was signed between Government of Orissa and Vedanta Foundation which was later named as Anil Agarwal Foundation on 19.7.2006 for establishment of World class multi disciplinary University at Puri. It required contiguous land of 8000 acres. Accordingly, by letter dated 29.11.2006 issued by the Government of Orissa, Department of Higher Education to the Commissioner-cum Secretary to Government, Revenue and Disaster Management, administrative approval was

given for acquisition of lands in 22 villages mentioned therein for the proposed Vedanta University by Anil Agarwal Foundation. Thereafter, the Foundation deposited the establishment cost and the opinion of the Law Department was obtained. The entire procedure contemplated under Chapter VII of the Land Acquisition Act and the Land Acquisition Companies Rules, 1963 have been complied with except notifying in the Official Gazette of the Committee to Advise the Government. A Core Committee was constituted which examined the matter from time to time and is also monitoring the same. It is further stated in the Counter Affidavit that by the time the Counter was filed 2338 acres of the land pertaining to 18 villages had already been acquired and compensation to the tune of Rs. 29,10 crore had already been paid to 1234 numbers of awardees. Apart from the above, Rs. 15. 70 crores has already been disbursed as ex gratia by the Project Authority. The question of rehabilitation and resettlement of the displaced persons has been well taken care of having regard to the Rehabilitation and Resettlement policy, 2006. The Committee which has been constituted by notification dated 17.8.2006 issued by the Department of Higher Education is a Core Committee to coordinate the activities relating to lease of Government land and acquisition of private land facilitating rehabilitation of displaced families as per the policy and for Ors. ancillary matters is consisted of; the Development Commissioner, Orissa, Principal Secretary to Government, Law Department, Commissioner- cum Secretary to Government, Higher Education Department, R.D.C., Central Division, Secretary to Government, Works Department, Special Secretary to Government, Finance Department and the Collector, Puri. The further case of the opposite party Nos. 1 to 5 is that most of the lands proposed to be acquired are inferior type, completely rain fed and there is no irrigation facilities available to the said lands. The allegation of the petitioners that the lands under acquisition are good agricultural land has been denied. It is further stated that due to acquisition of land in 18 villages only 94 families are going to be displaced as per the socio economic studies conducted by the Xavier Institute of Management, Bhubaneswar. As regard acquisition of land of Sri Jagannath Mahapravu Bije at Puri is admitted in the counter affidavit. So far an amount of Rs. 8,78,94,399/-has been paid to the Administrator of Sri Jagannath Mandir Parichalana Committee for an area of 605. 87 acres in respect of ten villages and an amount of Rs. 4,09, 73,327/- has already deposited in the SBI, Puri for an area of 300.92 as per the direction of this Court. The opposite parties have stated that for the establishment of University by the Foundation an area of Ac.6"150.00 is required out of which Ac. 5488.00 is private land and Ac. 702.00 are Government Land. The aforesaid lands do not come under the purview of Balukhanda Wild Life Sanctuary. Therefore, the allegation of the petitioner that the establishment of the University will affect the environment, wild life and deprive the bread and butter of the petitioners is baseless. The further case of the opposite parties is that Vedanta University will promote the educational activities of international standard and shall impart education at par with Oxford, Standford and Cambridge University etc. and it shall be a non-profit making University, therefore, the signing of MOU for the purpose of establishment of the

University is genuine and there is no mala fide intention in it. The villages of the project area are outside the Balukhanda Konark Wild Life Sanctuary, therefore, it shall have no adverse effect on environment. The Existence of two rivers namely, Nuanai and Ciarcut inside the project area is admitted. Further a stand is taken that Anil Agarwal Foundation has changed its status from Private Company to Public Company and the procedure for land acquisition as prescribed in the Act and the Rules has been meticulously followed and the Law Department has been consulted whenever required. Notification u/s 4(1) of the Act has been issued after the Government was satisfied that the Anil Agarwal Foundation has changed its status from Private to Public Company. It is the further case of the opposite parties that though the provision of Rule 4 of the Land Acquisition Companies Rules, 1963 have not been complied with in letters, it is deemed to have been complied with in spirit as all the steps required under the said Rules have been broadly seen to be complied. It is further submitted that the land which comes under the Project Area is not sensitive to ecology, and on the basis of the letter dated 28.11.2007 of the Conservator of Forest (WL), Bhubaneswar, the opposite parties have stated that no information about area if any reserved by Government for development of eco-tourism is available in the office of the Principal CCF. Further by letter dated 11.12.2007, the Director, Tourism has informed the Joint Secretary to the Government, Revenue and Disaster Management Department that the 8000 acres of land at Puri-Konark Marine Drive as mentioned in paragraph-7 of W.P.(C) No. 11607 of 2007 has not been reserved by Tourism Department under Orissa Tourism Policy for development of eco tourism. The Ors. side of the land between the sea and the road has not been declared as bird sanctuary under Orissa Tourism Policy. Therefore, it is submitted that the area is not coming under the purview of wild life zone or eco tourism and further stated that after Section 4(1) notification was published, there was enough scope for filing objection u/s 5A of the Act, but in response to the notification, nobody filed any objection u/s 5A of the L.A. Act. The petitioner in W.P.(C) 7360 of 2007 also did not file any objection either during the statutory period or thereafter. The stand of the opposite party Nos. 1 to 5 is that the process for acquisition of land for the proposed Vedanta University was started only after the status of the Company was changed from Private to Public Company. The notifications u/s 4(1) of the Act were published in two daily newspapers and also at conspicuous places of the village and G. P. Headquarters for wide publicity. A lot of deliberation and inter-action had been made with the villagers, hence, ample opportunities have been provided to the land losers and the villagers to file objection u/s 5A of the L.A. Act. Even then, nobody came forward to file objection. Therefore, opposite parties 1 to 5 have prayed for dismissal of the writ petition.

10. Counter affidavit has also been filed by the Collector, Puri in W.P.(C) No. 11607 of 2007 in which the prayer is for excluding the petitioner's land in mouza Beladala from the purview of acquisition. The stand of the Collector is that mouza Beladala was included in the Section 4 (1) notification though initially Ac.

1052.43 decimals of land were notified for acquisition in the said village, subsequently 226.52 acres were excluded as the above land had already been acquired previously for Ors. purposes.

11. Counter affidavit has been filed by the beneficiary companies entirely traversing the allegations made in respective writ petitions. The stand of the Company is that Anil Agarwal Foundation is a non-profit making charitable public company taking steps for the establishment of Vedanta University which is for a public purpose. The provisions of Part VII of the L.A. Act have been complied with and the State Government has given its consent u/s 39 of the Act for acquisition of the land. The agreement u/s 41 of the Act has been executed between the State Government and the Public Company containing the conditions for advance payment of the cost of acquisition and reversion of the acquired land to the State Govt. in the event Company failed to complete the work within the stipulated period. Their main thrust of argument is that the PILs are not maintainable because it is not filed bona fide but with a mala fide intention and oblique motive. The petitioners have no locus standi to maintain a PIL as only persons interested have right to object to the land acquisition proceeding in respect of their interest in the land. According to them after publication of the notification u/s 4(1) of the Act about 10 numbers of objections were filed u/s 5A which were disposed of by the competent authority and the petitioners who have filed the PIL have never made any written objections though they have the knowledge of the notifications/declarations made u/s 4 and 6 of the Act respectively. There is no document to show that the lands of the petitioner No. 2 and in W.P.(C) No. 10325 of 2008 are sought to be acquired. It is the contention of the beneficiary company that land losers cannot file writ petition in the nature of PIL in representing capacity for Ors. land losers especially when no objections have been filed u/s 5A of the Act after issuance of notification u/s 4 of the Act. It is further stated that acquisition proceedings of 18 villages are at different stages. Out of 18 villages, in respect of 7 villages, namely, Nilakanthapada, Rahanagiria, Gaindol, Nalihana, Kantasila, Sirihana and Fanafana, and acquisitions proceedings have already been completed by making of awards, and after disbursement of compensation amount to the owners/interested persons, possession of 1871 acres was taken by the State and has already been delivered to the beneficiary company. In respect of three villages only declaration u/s 6 of the Act has been made and in 8 villages, awards u/s 11 of the Act have been passed in respect of 868.35 acres of land and delivery of possession is awaited. It is stated that about 2700 persons have received the compensation amount from the State Government. Further case of the beneficiary company is that the PIL has been filed after more than one and half year of the publication of the notification u/s 4(1) of the Act. Therefore, the PIL petitioners are estopped from raising allegation of violation of the provisions of the L.A. Act and non-compliance of the Rule 4 of the Land Acquisition Companies Rules, 1963 as the persons affected have acquiesced to the land acquisition proceeding pursuant to the notification u/s 4(1) of the Act. Further the land

oustees/villagers on whose behalf the PIL petitioners espoused the cause have never filed objection u/s 5-A of the Act on the ground of violation of legal right nor have the PIL petitioners come forward within the stipulated period to file statutory objection alleging procedural improprieties in the land acquisition process or any illegality or irrationality in the administrative decisions. Since this Court has already declined to interfere in the land acquisition process, in W.P.(C) No. 6981 of 2008 filed by way of PIL, the subsequent PIL writ petitions for the self same cause are not maintainable in law and therefore prayed for dismissal of the same. Similar stand has also been taken in the counter affidavit filed in the connected writ petitions.

12. Having regard to the pleadings of the parties, the following points arise for consideration.

POINTS

1. Whether the Anil Agarwal Foundation, the beneficiary company, is a public company in terms of the definition u/s 3 (1) (iv) of the Companies Act, 1956 and can the Private Guarantee Limited Company be converted to Public Company u/s 25 of the Companies Act ?

2. Whether the State Government can acquire the lands in question in favour of the beneficiary company in exercise of its eminent domain power for the purpose of establishment of the proposed Vedanta University (not in existence) in view of Section 44-B of the Land Acquisition Act, 1894 ?

3. Whether the State Government on the requisition of Vedanta Foundation could have initiated the acquisition proceedings in favour of the beneficiary company by issuing notifications u/s 4(1) of the L.A. Act without complying with the mandatory provisions of Section 39, 41 and 42 of the Land Acquisition Act read with Rules 3(2) and 4 of the Land Acquisition (Companies) Rules, 1963 ?

4. (a) Whether the Collector was required to conduct an inquiry as contemplated u/s 5-A of the Land Acquisition Act even in the absence of filing objections to the show cause notice along with preliminary notification proposing to acquire the lands of the land owners/interested persons in favour of a beneficiary company?

(b) Whether the Collector was required to submit his report to the State Government in relation to certain matters as referred to under Clause (1) of Rule 4 as it is mandatory for further action u/s 6 of the Act, 1894 in view of the fact that the acquisition will entail serious civil consequences of the owners of the lands ?

5. (a) Whether the owners /interested persons of the land in question have waived or acquiesced their rights for not filing objections to the preliminary notifications ?

(b) Whether there is any delay and laches in these writ petitions and for that reason they are not entitled to the relief as prayed in these writ petitions ?

6. Whether the Core Committee appointed by the State Government is in compliance with the provision u/s 40, Sub-section (2) of the Act, 1894 and it has conducted an inquiry and submitted its report to the State Government for its consideration and compliance of the above provisions of the Act can dispense with the Rules 3 & 4 of the Land Acquisition (Companies) Rules, 1963 for declaring the lands required to the beneficiary company u/s 6 of the L.A. Act ?

7. Whether the State Government has complied with Rules 3(2) and 4 of the Rules, 1963 and the Collector has submitted his report to the State Government and the same is forwarded to the Committee constituted for this purpose and whether it has consulted the Committee before declaring the lands notified & published u/s 6 notifications?

8. Whether the beneficiary company has executed Memorandum of Understanding as required u/s 41 of the Land Acquisition Act with the State Government giving undertaking as provided under Sub-sections (1), (2) & (3) of the said Section of the Act and the same is published in the Official Gazette as required u/s 42 thereof ?

9. Whether the Memorandum of Understanding dated 19.7.2006 executed by the beneficiary company can be construed as a valid one agreement as provided u/s 41 of the L.A. Act for acquiring the lands in question in favour of the beneficiary company.

10. Whether the notifications published u/s 6 of the Land Acquisition Act declaring the proposed lands required for establishing the proposed Vedanta University is in compliance with Rule 4 of the Rules, 1963 and the Collector has determined approximate amount of compensation to be awarded and deposited as required under the provisions and by following the procedure as provided under Sections 23 & 24 of the L.A. Act ?

11. Whether awards are passed by the Collector in compliance with Sections 9, 10, and 11 of the L.A. Act and award notices as required u/s 12(2) of the Act are issued and served upon the owners/interested persons and thereafter possession of the lands has been taken by the State Government u/s 16 of the L. A. Act and transferred in favour of the beneficiary company ?

12. (a) Whether the impugned notifications acquiring the lands in the locality is legal & valid, as certain lands of them are declared for Wildlife Sanctuary according to Gazette Notification dated 23.4.1984 and two rivers viz. "Nuanai" and "Nala" are flowing in the lands in question according to Satellite Map issued by the Department of Forest, would it affect the ecology and environment in the locality?

(b) If so, whether it amounts to violation of provisions of Wild Life (Protection) Act ; Air (Prevention & Control of Pollution) Act as well as Water (Prevention & Control of Pollution) Act, and Environment Protection Act of 1986 and for this reason would it affect either the public interest or public injury or violation of

Rule of law?

13. Whether Public Interest Petitions must succeed if the question Nos. 12(a) & (b) are answered in favour of the petitioners and for violation of any provisions of Land Acquisition Act as well as Land Acquisition (Companies) Rules ?

14. Whether the acquisition proceedings in its entirety liable to be quashed, if the petitioners have made out a case, by exercising judicial review power by this Court ? and

15. What reliefs petitioners are entitled ?

Answer to Point Nos. 1 and 2.

13. Mr. Jayant Das, learned Senior Counsel on behalf of the public interest writ petitioners in W.P.(c) No. 10325 of 2008 urged that Section 2 (23) of the Act states that "limited company" means a company limited by shares or by guarantee. Section 2 (35) defines "private company". Section 2 (37) states about "public company". Section 3(1)(iii)(b)(i), (c) and (d) deals with private company and Clause (iv)(a)(b) and (c) of Sub-section (1) of Section 3 refers to public company, which shall have a minimum paid-up capital of five lakh rupees or such higher paid up capital, as may be prescribed. However, Sub-section (6) of Section 3 provides that a company registered u/s 25 of the Act, 1956 before or after the commencement of Companies (Amendment) Act, 2000 shall not be required to have minimum paid-up capital specified in the section. Public company is a residuary company.

14. Mr. Das with reference to Section 2(23) and 2 (27) read with Section 3(1) (III),(a)(b) and Section 27(3) contends that for a public limited company there shall be seven or more shareholders but for a private company two or more persons associated for a lawful purpose. In the instant case it is a Company limited by guarantee as mentioned in the Memorandum of Association to the tune of Rs. 5000.00. Shares of a company limited by guarantee is neither transferable nor convertible like public limited company. Public limited company shares cannot be allowed to travel to public company u/s 3(1)(iv) of the Act. There is no provision in the Companies Act to convert from a private limited company to public limited company as the structure and guarantee to it co-terminates. He has placed strong reliance upon the affidavit of the Assistant Registrar of Companies filed in the instant case pursuant to the direction issued by this Court in these proceedings. The Assistant Registrar is also a Registrar in terms of definition of Section 2(40) of the Act, 1956.

15. On the Ors. hand, Mr. Anil Diwan, Learned Senior counsel on behalf of the Foundation placing strong reliance upon the statement of counter filed by it in W.P.(C) No. 10325 of 2008 and also the affidavit of the Assistant Registrar of Companies and Annexures-R/13 and R/14 to the affidavit and counter affidavit of opposite party No. 3 of the paper book and Sections 12 and 44 of the Companies Act, submits that the Foundation is not a limited share holding. He submits that

the certificate has been issued by the Registrar of Companies in favour of the Foundation evidencing the fact that it is a public company. Therefore he submits that acquisition of land by the State Government in favour of the Foundation for establishing the University in the acquired lands is for a public purpose to impart world-class education institutions in various courses to the students of the country and also Ors. foreign students. He further submits that the various legal contentions urged on behalf of the petitioners that the Foundation is not converted into a public limited company from private company is wholly untenable in law as the same is contrary to facts and law and therefore requested to reject the contention urged in this regard. Accordingly, he requests this Court to answer the point on this aspect in favour of the Foundation and consequently the Ors. points that would arise for consideration also in its favour as the acquisition of lands by the State Government is permissible under the provisions of Part VII of the L.A. Act and it is also for public purpose.

16. With reference to the rival legal contentions urged on behalf of the parties with regard to Point Nos. 1 and 2, our answer to the above points is against the Foundation for the following reasons. It would be necessary for us to extract the provisions of Sections 2(23), 2(27) and 3 (1)(iii) (a)(b)(c)(d) and (iv)(a)(b)(c) of the Companies Act, which read thus:

2(23). "limited company" means a company limited by shares or by guarantee.

2(27) "member" in relation to a company, does not include a bearer of a share-warrant of the company issued in pursuance of Section 114;

3 (1) " Definition of "company"," existing company", "private company" and "public company".(1) In this Act, unless the context otherwise required, the expressions "company", "existing company", "private company" and "public company", shall, subject to the provisions of Sub-section (2), have the meanings specified below:

x x x x (iii) "private company" means a company which has a minimum paid-up capital of one lakh rupees or such higher paid-up capital as may be prescribed, and by its articles.-

(a) restricts the right to transfer its shares, if any;

(b) limits the number of its members to fifty not including-

(i) persons who are in the employment of the company; and

(ii) persons who, having been formerly in the employment of the company, were members of the company while in that employment and have continued to be members after the employment ceased; and

(c) prohibits any invitation to the public to subscribe for any shares in, or debentures of, the company.

(d) Prohibits any invitation or acceptance of deposits from persons Ors. than its

members, directors or their relatives:

Provided that where two or more persons hold one or more shares in a company jointly, they shall, for the purposes of this definition, be treated as a single member.

(iv) "public company" means a company which-

(a) is not a private company;

(b) has a minimum paid-up capital of five lakh rupees or such higher paid-up capital, as may be prescribed;

(c) is a private company which is a subsidiary of a company which is not a private company.

17. Section 12(1) of the Act, 1956 deals with mode of forming incorporated company which provision states that any seven or more persons, or where the company to be formed will be a private company, any two or more persons associated for any lawful purpose may, by subscribing their names to a Memorandum of Association and otherwise complying with the requirements of this Act in respect of registration, form an incorporated company, with or without limited liability. Section 27 speaks of regulations required in case of unlimited company, company limited by guarantee or private company limited by shares. Sub-section (2) of the aforesaid provision provides that in the case of a company limited by guarantee, the articles shall state the number of members with which the company is to be registered. Section 37 states that in the case of a company limited by guarantee and not having a share capital and registered on or after the first day of April, 1914, every provision in the memorandum or articles or in any resolution of the company purporting to give any person a right to participate in the divisible profits of the company otherwise than as a member shall be void. As could be seen from paragraph 6 of the affidavit of the Assistant Registrar of Company & Corporate Affairs on behalf of opposite party No. 13 (Regional Director) and 14 (Registrar of Companies) in W.P.(C) No. 10325 of 2008, who has been authorized on behalf of the Registrar of Companies at Mumbai to file the affidavit, has filed affidavit pursuant to the direction of this Court in these proceedings stating that M/s. Vedanta Foundation was originally incorporated with the Registrar of Companies, Maharashtra, Mumbai on 12.5.2004 u/s 25 of the Companies Act, 1956 as Sterlite Foundation, a private limited company as defined u/s 3(1)(iii) of the Act and subsequently changed its name to M/s. Vedanta Foundation pursuant to Section 21 read with Section 23(1) of the Companies Act, 1956 and again changed its name to M/s. Anil Agarwal Foundation vide fresh certificate of incorporation dated 6.9.2006 issued consequent upon the said change of its name. Further at paragraph 9 of the affidavit, it has been stated that opposite party No. 13, in the said PIL writ petition considered the conversion of the status of opposite party No. 6 Foundation from Private to a Public Company subject to compliance of the provisions of Sections 23, 31, 189(2) and 192 of the Act but the said Foundation

did not furnish to opposite party No. 14 certified copy of the Memorandum and Articles of Association as required under the provisions of Sub-section (2A) of Section 31 of the Act. Further the Assistant Registrar has stated at para 10 of the affidavit that change of status of the Foundation from private to public was subject to compliance of the aforesaid provisions of the Act and the same is not complied with by the beneficiary company, therefore it has not acquired the status of a "public company". Further the company has been promoted by four members the names and addresses of whom have been furnished at para 10(a) of the affidavit. Further at paragraph 10(b), it is stated by the Assistant Registrar that as per the Articles of Association, Sterlite Foundation has been incorporated as a company limited by guarantee and not having share capital. The above said Directors were first Directors of the Company. As per details mentioned in Form No. 32 filed on 19.7.2006, one Laxminarayan Agarwal ceased to be a Director and member of the Company with effect from 2.4.2006 due to his death. Therefore, the company is presently having three Directors on its Board and less than seven members as required for a public limited company u/s 12 (b) of the Act. As the Foundation has not produced the altered Memorandum and Articles of Association of the Company, and the same are not available in the office of the Registrar of Companies at Mumbai a letter was addressed to it for supply of the duly certified copy of the same. The said letter was returned with postal remark "not known". At paragraph 12 of the affidavit it is stated that opposite party No. 13 considered the change of status of the Foundation from "private" to "public" company both on fact and in law is not legal and valid. Since the Foundation did not furnish the Memorandum and Articles of Association to opposite party No. 14, the change of status of the Foundation from "private limited" company to "public limited" company with reference to Section 3 (1)(iii) and Section 3 (1) (iv) cannot be deemed to be a Public Company and it is not a Government Company as defined u/s 617 of the Act, 1956 read with the provisions of Sections 618 to 620 of the said Act till the provisions of Sections 44 of the Act are complied with and also the requisite minimum number of members as required u/s 12 (b) of the Act are complied with by it. The Foundation, a company incorporated u/s 25 of the Act, 1956 by collusion is not a Public Company in terms of the aforesaid provisions of the Act. In view of the aforesaid statement of fact sworn to by competent officer of the Ministry of Company Affairs and having regard to the undisputed fact, it is a private company limited by guarantee. For the reasons stated supra, the submission made on behalf of the petitioners that Anil Agarwal Foundation is not a "public limited" company for the purpose of acquisition of lands in its favour under Part VII of the Land Acquisition Act and the acquisition of land in favour of the company for educational purposes as it falls within the definition of Society in Section 3(f) Sub-clause (vi) of the L.A. Act and to establish Educational Institutions is neither sponsored by the State Government or Local Authorities as required under the above provisions shall be accepted by this Court as the same is well founded. In support of the above said views in giving answer to point No. 1, it would be necessary for us to refer to the decision of the apex Court hereunder.

18. In the case of Needle Industries (India) Ltd. and Others Vs. Needle Industries Newey (India) Holding Ltd. and Others, a three Judge Bench of the Hon"ble Supreme Court examined and explained the definitions of "private company" and a "public company" and held as under:

147. In the first place, a Section 43-A company may include in its articles, as part of its structure, provisions relating to restrictions on transfer of shares, limiting the number of its members to 50, and prohibiting an invitation to the public to subscribe for shares, which are typical characteristics of a private company. A public company cannot possibly do so because, by the very definition, it is that which is not a private company, that is to say, which is not a company which by its articles contains the restrictions mentioned in Section 3(I) (iii). Therefore, the expression "public company" in Section 3(1)(iv) cannot be equated with a "private company which has become a public company by virtue of Section 43-A".

148. Secondly, the number of members of a public company cannot fall below 7 without attracting the serious consequences provided for by Section 45 (personal liability of members for the company's debts) and Section 433 (d)(winding up in case the number of its members falls below 7). A Section 43-A company can still maintain its separate corporate identity qua debts even if the number of its members is reduced below seven and is not liable to be wound up for that reason.

149. Thirdly, a Section 43-A company can never be incorporated and registered as such under the Companies Act. It is registered as a private company and becomes, by operation of law, a public company.

150. Fourthly, the three contingencies in which a private company becomes a public company by virtue of Section 43-A [mentioned in Sub-sections (1), (1-A) and (1-B) read with the provisions of Sub-section (4) of that section] show that it becomes and continues to be a public company so long as the conditions in Sub-sections (1), (1-A) or (1-B) are applicable. The provisos to each of these Sub-sections clarify the legislative intent that such companies may retain their registered corporate shell of a private company but will be subjected to the discipline of public companies. When the necessary conditions do not obtain, the legislative device in Section 43-A is to permit them to go back into their corporate shell and function once again as private companies, with all the privileges and exemptions applicable to private companies. The proviso to each of the Sub-sections of Section 43-A clearly indicates that although the private company has become a public company by virtue of that section, it is permitted to retain the structural characteristics of its origin, its birthmarks, so to say. Any provision of the Companies Act which would endanger the corporate shell of a "proviso company" cannot be applied to it because, that would constitute an infraction of one or more of the characteristics of the "proviso company" which are statutorily allowed to be preserved and retained under each of the three provisos to the three Sub-sections of Section 43-A. A right of renunciation in favour of any Ors. person, as a statutory term of an offer of rights shares, would

be repugnant to the integrity of the Company and the continued retention by it of the basic characteristics u/s 3(l)(iii).

151. Fifthly, Section 43-A, when introduced by Act 65 of 1960, did not adopt the language either of Section 43 or of Section 44. u/s 43 where default is made in complying with the provisions of Section 3(1)(iii), a private company "shall cease to be entitled to the privileges and exemptions conferred on private companies by or under this Act, and this Act shall apply to the company as if it were not a private company". u/s 44 of the Act, where a private company alters its articles in such a manner that they no longer include the provisions, which u/s 3(l)(iii)" are required to be included in the articles in order to constitute it a private company, the company "shall as on the date of the alteration cease to be a private company". Neither of the expressions, namely, "this Act shall apply to the company as if it were not a private company" (Section 43) or that the company "shall cease to be a private company (Section 44) is used in Section 43-A. If a Section 43-A company were to be equated in all respects with a public company, that is a company which does not have the characteristics of a private company, Parliament would have used language similar to the one in Section 43 or Section 44, between which two sections, Section 43-A was inserted. If the intention was that the rest of the Act was to apply to a Section 43-A company "as if it were not a private company", nothing would have been easier than to adopt that language in Section 43-A; and if the intention was that a Section 43-A company would for all purposes "cease to be a private company", nothing would have been easier than to adopt that language in Section 43-A.

152. Sixthly, the fact that a private company which becomes a public company by virtue of Section 43-A does not cease to be for all purposes a "private company" becomes clear when one compares and contrasts the provisions of Section 43-A with Section 44: when the articles of a private company no longer include matters u/s 3(1)(iii), such a company shall as on the date of the alteration cease to be a private company [Section 44(1)(a)]. It has then to file with the Registrar a prospectus or a statement in lieu of prospectus u/s 44(2). A private company which becomes a public company by virtue of Section 43-A is not required to file a prospectus or a statement in lieu of a prospectus.

153. These considerations show that, after the Amending Act 65 of 1960, three distinct types of companies occupy a distinct place in the scheme of our Companies Act: (1) private companies (2) public companies and (3) private companies which have become public companies by virtue of Section 43-A, but which continue to include or retain the three characteristics of a private company. Sections 174 and 252 of the Companies Act which deal respectively with quorum for meetings and minimum number of directors, recognize expressly, by their parenthetical clauses, the separate existence of public companies which have become such by virtue of Section 43-A. We may also mention that while making an amendment in Sub-clause (ix) of Rule 2(a) of the Companies (Acceptance of Deposits) Rules, 1975, the Amendment Rules, 1978

added the expression: "any amount received ... by a private company which has become a public company u/s 43-A of the Act and continues to include in its Articles of Association provisions relating to the matters specified in Clause (iii) of Sub-section (1) of Section 3 of the Act" in order to bring deposits received by such companies within the Rules.

154. The various points discussed above will facilitate a clearer perception of the position that under the Companies Act, there are three kinds of companies whose rights and obligations fall for consideration, namely, private companies, public companies and private companies which have become public companies u/s 43-A(1) but which retain, under the first proviso to that section, the three characteristics of private companies mentioned in Section 3 (1) (iii) of the Act. Private companies enjoy certain exemptions and privileges which are peculiar to their constitution and nature. Public companies are subjected severely to the discipline of the Act. Companies of the third kind like NIIL, which become public companies but which continue to include in their articles the three matters mentioned in Sub-clauses (a) to (c) of Section 3 (1) (iii) are also, broadly and generally, subjected to the rigorous discipline of the Act. They cannot claim the privileges and exemptions to which private companies which are outside Section 43-A are entitled. and yet, there are certain provisions of the Act which would apply to public companies but not to Section 43-A companies. Is Section 81 of the Companies Act one such provision? and if so, does the whole of it not apply to a Section 43-A company or only some particular part of it? These are the questions which we have now to consider.?

(Emphasis supplied)

19. Therefore, in view of the reasons assigned above, the reliance placed by the learned Senior Counsel Mr. Anil Diwan on behalf of the Company upon the above referred various provisions of the Companies Act and documents in support of his submission that Anil Agarwal Foundation is a "Public Limited Company" is wholly untenable in law as the same is contrary to facts and various provisions of the Act, 1956 which are adverted to above, and law laid down by the Apex Court on this aspect. Therefore, we have to hold the first point against the beneficiary company/ Foundation.

20. The second point is also required to be answered in favour of the petitioners for the following reasons. The case of the beneficiary company/Foundation is that it is a public limited company and therefore acquisition of lands by the State Government in exercise of its eminent domain power for establishment of the University is permissible in view of Section 40 of the L.A. Act. The provisions of Section 40(1) of the L.A. Act provides that consent for acquisition of land shall be given by the appropriate Government if it is satisfied either on the report of the Collector u/s 5-A(2) or by an enquiry held that the purpose of the acquisition of lands is for the erection of dwelling-house for workmen employed by the company or for the provision of amenities directly connected therewith, or that such acquisition is needed for the construction of some building or work for a

company which is engaged or is taking steps for engaging itself in any industry or work which is for a public purpose or that such acquisition is needed for the construction of some work and that such work is likely to prove useful to the public. Section 44-B of the Act provides that notwithstanding anything contained in the L.A. Act, no land shall be acquired under Part VII except for the purpose mentioned in Clause (a) of Sub-section (1) of Section 40 for a private company which is not a Government company. Since we have answered the point No. 1 in favour of the petitioners and against the Foundation holding that it is Private Limited Guarantee Company, acquisition of lands in favour of the beneficiary company is permissible only for the purposes mentioned in Clause (a) of Sub-section (1) of Section 40 of the L.A. Act, as the Foundation is neither a Government Company nor a Public Company. The acquisition of lands in favour of the beneficiary company is not permissible for any purpose Ors. than the purposes as provided under Sections 40(1)(a) of the L.A. Act. In this view of the matter, the proposed acquisition of lands in favour of the Foundation pursuant to the impugned notifications for the purpose of establishment of a non-existent University, as rightly pointed out by the learned Senior Counsel Mr. Jayant Das for the petitioners that such University has not come into existence either Under the University Grants Commission Act, 1956 in terms of Section 2 (f) or under the Orissa Universities Act, and, therefore, the acquisition of lands in favour of the Foundation is illegal in the eye of law. The undisputed fact is that there is an Ordinance promulgated by the Government of Orissa at the time of initiation of the proceedings to establish a University by the Foundation. Such Ordinance is wholly untenable in law for the reason that the proposed University only can be established under the Orissa Universities Act and such University will have a status of a deemed University under the provisions of the University Grants Commission Act if it is granted under the said Act by issuing notification u/s 3 of the Act. Therefore, the Ordinance promulgated by the State Government in favour of the Foundation cannot give the legal status to the University proposed to be established in the acquired lands by the Foundation. Under the provisions of Section 44-B of the L.A. Act of Chapter VII, acquisition of lands in favour of a private company can only be made for the purposes mentioned in Clause (a) of Sub-section (1) of Section 40 of the Act, which is for erection of dwelling-houses for workmen employed by the company or for the provisions of amenities directly connected therewith. The acquisition of lands for establishment of the proposed non existent University does not fall within the purposes mentioned in the Clause (a) or the aforesaid provisions of Section 40 and further it does not fall within the public purpose in terms of Section 3(f) Clause (vi) of the L.A. Act for the reason that establishment of a non-existent University by a private company cannot be held as public purpose in terms of the above provisions and law laid down by the apex Court in this regard. Therefore, acquisition of lands by the State Government on the request of the Vedanta Foundation is totally impermissible in law. Hence, the impugned notifications are void ab initio in law and are liable to be quashed. Accordingly, the second point is answered against the Foundation and in favour of the petitioners.

Answer to Points 3, 4(a)(b) and 5 (a) & (b), 6,7,8,9,10 & 11

21. All these points being inter related, are taken up together and answered as hereunder.

The case of the petitioners who are land owners and public spirited persons in these cases is that the notification issued u/s 4(1) of the L.A. Act, proposing to acquire the lands in the locality in favour of the beneficiary company for establishment of the proposed Vedanta University is not legally permissible for the reason that it is not a "public company" in terms of the definition of Section 3(iv) of the Companies Act as the beneficiary company is a guarantee Private Limited Company. Therefore, the proposed acquisition of lands for the purpose of establishing a University does not fall within the purpose for which the lands are proposed to be acquired as per Clause (a) or (b) of Sub-section (1) of Section 40 of the L.A. Act. Therefore, it is not permissible in law for the State Government to acquire the lands in favour of the beneficiary Company and further this important legal aspect of the matter has not been properly considered by the State Government, while exercising its power u/s 4 (1) of the L.A. Act to initiate the acquisition proceedings in view of Section 44-B of the L.A. Act. Further the Collector of the District where the acquired lands are situated has not conducted any enquiry, by serving individual notices upon the owners/interested persons, as required u/s 5-A (2) of the L.A. Act and/or previous enquiry u/s 40 of the Act or under Rule 4 of the Rules. Section 39 of the L.A. Act expressly states that provisions of Sections 6 to 16 (both inclusive) and Sections 18 to 37 (both inclusive) shall not be put in force in order to acquire land for any company under Chapter VII unless with the previous consent of the appropriate Government and unless the company shall have executed the agreement mentioned therein in its favour. Placing strong reliance upon decision in the case of State of Gujarat and Another Vs. Patel Chaturbhai Narsibhai and Others, and also another judgment of the Supreme Court in the case of Hindustan Petroleum Corporation Ltd. Vs. Darius Shapur Chenai and Others, , learned Senior Counsel contended that land owners are entitled to be given opportunity of being heard by conducting an enquiry as contemplated u/s 5-A or previous enquiry u/s 40 of the L.A. Act.

22. Learned Senior Counsel Mr. Jayant Das, Mr. R.K. Rath and learned Counsel Mr. Subir Palit who appeared on behalf of the petitioners both for the owners of land and the public spirited persons in the Public Interest Litigation petitions placed strong reliance upon Rule 3(2) of the Rules framed by the Union of India in exercise of its power u/s 55 of the L.A. Act. It is contended by them that in the proposed acquisition of lands in favour of the beneficiary Company in terms of the provisions of Section 40 (1) of the L.A. Act under Part VII read with Rules 3 & 4 of the Rules are applicable to the acquisition proceedings, the State Government is required to acquire the lands by following the due procedure as contemplated therein. Rule 3 of the said Rules provides for constitution of a Committee called "Land Acquisition Committee" and the State Government shall

publish the same in the Official Gazette. In the case at hand, undisputedly no such Committee was constituted by the State Government from among the persons notified under Sub-rule (2) of Rule 3 and clauses (i) and (ii) of the Rules. Further they have submitted that whenever any Company makes an application to the State Government for acquisition of any land, it shall direct the Collector to submit a report on the matters provided under sub-rule (2) and Clauses (i), (ii), (iii) and (iv) of the Rule 4 which are elaborately extracted in the reasoning portion and further Sub-rule (2) of Rule 4 provides that the Collector should give reasonable opportunity to the Company to make representation and hold an enquiry into the matters referred to in sub -rule (1) and while conducting such an enquiry he is required to indicate in his report the aspects, which are referred to in Clauses (i), (ii) and (iii) of Sub-rule (2) of Rule 4. Sub-rule (4) of Rule 4 mandates that no declaration u/s 6 in respect of the lands notified u/s 4 (1) of the L.A. Act shall be made unless the State Government has consulted the Committee and has considered the reports submitted by the Collector under the Rule and the report, if any submitted u/s 5A of the Act and the agreement u/s 41 of the Act has been executed by the Company and published in the Official Gazette. The above said mandatory procedure has not been complied with by the State Government and the Collector before publishing the Section 6 notifications. Therefore, the acquisition proceedings in respect of the lands covered in the notifications in favour of the beneficiary Company/Foundation are bad in law, hence the same are liable to be quashed.

23. Learned Senior Counsel appearing on behalf of the petitioners in support of the above said legal contentions placed reliance upon the following decisions of the Supreme Court, namely, Shanti Sports Club and Another Vs. Union of India (UOI) and Others, and City Montessori School Vs. State of Uttar Pradesh and Others, . It is contended by the learned Senior Counsel Mr. R.K. Rath that the memorandum of agreement was executed by the Vedanta Foundation and not by Anil Agarwal Foundation in favour of the State Government before the initiation of the acquisition proceedings. Therefore, it is not a valid agreement as required u/s 41 of the Act. Further, certain clauses in the said agreement would clearly go to show that the State Government has pre determined the issue regarding acquisition of lands without getting the report from the Collector as required under Sub-rule (4) of Rule 4 of the Rules and declaration of the acquisition of lands u/s 6 of the L.A. Act is bad in law. Therefore, he would further submit that the impugned notifications of acquiring the lands are in violation of the statutory provisions of the L.A. Act and the Rules. Learned Senior Counsel further submitted that the observance of the aforesaid statutory rules by the State Government in order to exercise its power is required to be strictly adhered to and followed as held by the Hon"ble Supreme Court in the cases of Shanti Sports Club (supra) and City Montessori School (supra).

24. Mr. Ashok Mohanty, learned Advocate General appearing on behalf of the State Government and the Collector on the basis of the record made available for our perusal submitted that the State Government has applied its mind and after

being satisfied that the proposed lands were required for public purpose, published the notifications u/s 4 (1) of the Act proposing to acquire the lands as mentioned in the preliminary notifications and notified the same after receipt of the requisition made by the beneficiary Company and notices were issued to the owners/interested persons calling upon them to submit their objection statement to the proposed acquisition. None of the owners filed their objection statement except the petitioners in W.P.(C) No. 3361 of 2007. Therefore, he submits that the contention of the petitioners that notices were not served upon them as required under the aforesaid provisions of the Act and conduct of the enquiry u/s 5-A of the L.A. Act was necessary, as urged by the learned Sr. Counsel and Ors. counsel on behalf of the petitioners, is not tenable in law. He further sought to justify the consent given by the State Government for complying with the provisions of Sections 6 to 16 and 18 to 37 of the L.A. Act both inclusive for the purpose of acquiring the lands in favour of the beneficiary Company u/s 39 of the Land Acquisition Act. Before giving such consent by the State Government issuing and publishing the notifications u/s 4(1) of the L.A. Act after the enquiry held by the Committee constituted by the State Government as provided under sub -rule (2) of Rule 3 and unless it opines that the lands which are proposed to be acquired as notified u/s 4 (1) of the L.A. Act are needed for the beneficiary Company to establish a multi discipline faculty University, which would serve the public purpose is not required in law and further he had submitted that the beneficiary Company has executed the agreement on 31.7.2007 in favour of the State Government as required u/s 41 of the L.A. Act and administrative approval was obtained on 29.11.2006. Revised administrative approval was granted on 13.12.2006 and notifications u/s 4 (1) were published on 22.12.2006 and on subsequent dates. Therefore, he would urge that the legal contentions of the petitioners that there was no previous consent of the State Government in notifying the proposed lands in the notifications is both on facts and in law are not at all correct. It is also further contended by him that on the basis of the Collector's report and the counter statement, the petitioners have not submitted their statement of objection to the notices served upon them along with Section 4(1) of notification opposing the proposed acquisition of lands by the State Government in favour of the beneficiary Company to establish a University. Hence the State Government after satisfying with the reports of the Collector and the Core Committee appointed as provided under Sub-section (2) of Section 40 of the L.A. Act has issued the declaration notifications u/s 6 of the L.A. Act. He has placed strong reliance upon Clause (a) or (b) of sub -section (1) of Section 40 of the L.A. Act, in justification of the acquisition . He further contended that the acquisition of the lands covered under the impugned notifications are for the public purpose as the beneficiary Company is going to establish a University in the State which will be of international reputation and therefore the acquisition of lands are legal and valid. Further he has placed strong reliance upon the decision of the Apex Court in the case of Fomento Resorts and Hotels Ltd. and Another Vs. Minguel Martins and Others, in support of his contention that public purpose as referred to in Clauses (a) or (b) of Sub-section (1) of Section 40 of the Act is

different from the definition of "public purpose" as given u/s 3 (f)(vi) of the L.A. Act. Further he has contended that in *Devinder Singh v. State of Punjab* (2008) 1 SCC 728 upon which reliance is placed by the Sr. Counsel for the petitioners in which the Apex Court has placed reliance upon the case of *State of Gujarat and Another Vs. Patel Chaturbhai Narsibhai and Others*, is not applicable to the facts of this case for the reason that Gujarat State Legislature has amended the provisions of Section 39 by inserting Section 4 of the L.A. Act . This legal aspect is not considered by the Apex Court in *Devinder Singh's* case and the decision in the case of *M/s. Fomento Resorts and Hotels Limited and Anr. v. Gustavo Ranato Da Cruz Pinto and Ors.*, (supra), clearly laid down the legal principles with reference to the provisions of the L.A. Act regarding for acquisition of lands in favour of the beneficiary Company as per Clause (a) or (b) of Sub-section (1) of Section 40 of the L.A. Act. Learned Advocate General has further placed strong reliance on the Three Judge Bench decision of the Apex Court in the case of *Swasthya Raksha Samiti Rati Chowk Vs. Chaudhary Ram Harakh Chand (D) by LRs. and Others*, , but the said matter has been referred to larger Bench in view of the doubt entertained by the Division Bench about the view taken by the Bench in Gujarat case referred to supra holding that notice to land owners is mandatory having not noticed contrary observation of the Five Judge Bench in *Babu Barkya Thakur v.the State of Bombay and Ors.* 1961 (1) SCR 126. In *Devinder Singh's* case, the Constitution Bench decision referred to (supra) has not been noticed by the apex Court and therefore the said decision is not helpful to the petitioners. He further placed strong reliance upon the judgment of the Supreme Court in the case of *M/s. Fomento Resorts and Hotels Limited's* cases referred to supra in support of his contention, wherein it has been held by the Apex Court in those cases that no enquiry is required under Rule 4 (1) preceding the initiation of acquisition proceedings and publishing notification u/s 4 of the L.A. Act as contended by the petitioners. Further he has placed reliance upon the decision of the Supreme Court in the case of *Abdul Husein Tayabali and Others Vs. State of Gujarat and Others*, in support of his legal submission that Section 5A of the L.A. Act enquiry is administrative enquiry and report of the Collector to the State Government is recommendatory in nature and it is not binding upon the State Government , therefore non submission of enquiry report by the Collector to the State Government does not vitiate the acquisition proceedings.

25. Learned Advocate General and learned Senior Counsel Mr. Anil Divan appearing on behalf of the State Government and the beneficiary Company respectively very vehemently submitted that the petitioners and Ors. owners of the land on whose behalf public litigation petitions are filed, have waived and acquiesced their statutory rights regarding the enquiry to be conducted by the Collector as they have not availed the opportunity given by the District Collector to them by not filing the statement of objections within thirty days from the date of service of notice upon them. Therefore, they submit that there is no need for the District Collector to conduct an enquiry u/s 5A of the Land Acquisition Act and further the acquisition is of the year 2007 and hence the same cannot be

interfered with by this Court at this stage. Learned Advocate General further contends that some of the land owners have received compensation to the tune of Rs. 50 crores and some of them have sought for reference to the Jurisdictional Reference Court for enhancement of the compensation. Therefore, it is submitted that the acquisition of lands by the State Government issuing preliminary and final notifications is legal and valid. Learned Advocate General further submits that compensation amount has been received by more than 80% of the land oustees after preferring claim in the proceedings u/s 11 and the Land Acquisition Officer has passed awards, compensation has been paid to the owners of the land and possession of the same has been taken over and delivered to the beneficiary company. Therefore, he submits that these are not fit cases for granting reliefs by this Court in favour of the petitioner -owners either in the petitions filed by them or in the public interest litigation petitions as there is no public interest involved, as the litigation in these cases is between the land owners and the State Government and therefore it is a private interest litigation and the substantial number of owners have not approached the Court seeking the relief of quashing the notifications. Therefore, this Court need not exercise its Judicial review power to quash the acquisition proceedings in the public interest litigation petitions and, prayed for dismissal of the petitions. In support of the aforesaid submissions, they have placed reliance upon the following decisions of the Apex Court. (1) Municipal Corporation of Greater Bombay Vs. The Industrial Development Investment Co. Pvt Ltd., and others, , (2) Narmada Bachao Andolan Vs. Union of India and Others, ; and (3) Chairman & Managing Director BPL Ltd. v. S.P. Gururaja and Ors., reported in 2003 AIRSCW 5298.

26. Mr. Anil Diwan, learned Senior Counsel for the Company submitted that initiation of the acquisition proceedings by the State Government at the instance of the Anil Agarwal Foundation for establishment of the University is a balancing act due to the economic policy of the Union of India and also globalization. Since all the owners of the lands have not come up before this Court questioning the legality and validity of the impugned notifications, therefore, this Court need not exercise its extra ordinary and discretionary power to quash the impugned notifications in respect of the lands of the Ors. owners who have not approached this Court. In the PIL writ petitions, the acquisition of the lands of the owners who have not approached this Court cannot be quashed. If the petitioner owners writ petitions are allowed, it would amount to quashing the notifications partially in respect of some of the acquired lands, which will not be permissible in law. In support of this submission, he has placed reliance upon the decisions of the Supreme Court in Delhi Administration v. Gurdip Singh Uban and Ors. AIR 2000 SC 3737. Further, placing reliance upon another decision of the Supreme Court in the case of Vijay Cotton and Oil Mills Ltd. Vs. The State of Gujarat, , learned Senior counsel further submits that the procedure to be followed by the District Collector u/s 5 -A of the L.A. Act after publishing the preliminary notifications is not mandatory in law. It is further contended that all the land owners have waived and acquiesced their rights regarding an enquiry under the above

provisions of the Act as they did not file objections to the proposed acquisition of their lands though notice being served upon them, therefore he submits that the acquisition proceedings need not be quashed by this Court in exercise of its Judicial Review power. In support of the above contention, he has placed reliance upon the decisions of the Supreme Court in the cases of State of Rajasthan and Others Vs. D.R. Laxmi and Others, ; and Swaika Properties Pvt. Ltd. and Another Vs. State of Rajasthan and Others, .

27. He has further contended that if the statement of objections regarding non-compliance of Rule 4 of the Land Acquisition (Companies) Rules of 1963 were not filed by the land owners, to what extent this Court can interfere with the impugned notifications, has to be considered by this Court even assuming for the sake of argument that non-compliance of the procedure contemplated under rules 3(2) and 4 of the Companies Rules by the State Government vitiates the acquisition proceedings. Learned Senior counsel further placing reliance upon the decision in Om Prakash and Another Vs. State of U.P. and Others, submitted that compliance of Rule 4 by the State Government is not mandatory. It is further submitted by learned Senior counsel Mr. Anil Diwan that Section 44B is not applicable to the facts of the case in view of the fact that it is not a private company. It is a public company got converted u/s 25 of the Act. Acquisition of lands by the State Government for the purpose of establishment of University is a public purpose and, therefore, acquisition proceedings were initiated at the instance of the Foundation by the State Government and after applying its mind and satisfying the requirement of the lands for the beneficiary company on the basis of the requisition made by it they have issued the Section 4(1) notifications.

28. The aforesaid submissions of learned Advocate General Mr. Ashok Mohanty, and learned Sr. Counsel Mr. Anil Divan have been strongly rebutted by the learned Senior Counsel Mr. Jayant Das appearing for the petitioners in the Public Interest Litigation petition contending that the beneficiary Company has played fraud upon the State Government for the reason that on the basis of representation submitted by the Vedanta Company and the Memorandum of Understanding executed by Vedanta Company and Sterlite Company claiming that it is Public Limited Company and on that basis acquisition proceedings were initiated by the State Government and lands were acquired in its favour. The beneficiary company is not at all a public limited company and misrepresenting this fact, it has got acquired lands for establishment of a university though it is not entitled for the same. Therefore, he strongly submits that the Foundation has played fraud on the State Government and fraud vitiates everything is the well settled principles of law. In this regard, he has placed strong reliance upon the decisions of the Apex Court in the cases of Smt. Shrisht Dhawan Vs. M/s. Shaw Brothers, ; S.P. Chengalvaraya Naidu (dead) by L.Rs. Vs. Jagannath (dead) by L.Rs. and others, ; United India Insurance Co. Ltd. Vs. Rajendra Singh and Others, ; Ram Chandra Singh Vs. Savitri Devi and Others, , and submits that there cannot be any waiver or acquiescence by the land owners, in view of the fact that there is violation of the fundamental rights and statutory rights of the

owners of the lands.. Therefore, he submits that the action of the State Government is void ab-initio in law for the reason that acquisition of lands in favour of non-existing University is a continuing wrong, which can be challenged by the petitioners before this Court and this Court has to examine the rights of the parties in exercise of its Judicial review power, as the action of the State Government is a continuing wrong.

29. Learned Senior Counsel for the petitioner Mr. Jayant Das further contends that Land Acquisition (Companies) Rules, 1963 is framed pursuant to the amendment of Section 4 (1) of the Act by Act 38 of 1923 as acquisition of lands in favour of company is as provided under Chapter VII of the L.A. Act read with the above Rules. Therefore, the procedure contemplated under Rule 4 should be complied with by the Collector and the State Government before publication of the notifications u/s 4(1) of the L.A. Act after giving consent by the State Government to acquire the lands as required u/s 39 of the Act and thereafter execution of agreement by the Company in favour of the State Government containing the terms and conditions as provided u/s 41 of the L.A. Act and publishing the same in the official Gazette as required u/s 42 of the L.A. Act which is the mandatory procedure required to be followed, that is not complied with by the State Government. In the instant case, the requisition dated 23.6.2006 was submitted to the State Government by Vedanta Foundation for acquisition of vast tract of lands in the locality in question for establishment of Vedanta University in the acquired lands. There is no requisition by the Anil Agarwal Foundation which is claimed to have converted as a public company u/s 25 of the Companies Act. The document Annexure-14 obtained by the petitioners in W.P.(C) No. 10325 of 2009 under the Right to Information Act from the Special Land Acquisition Officer would clearly show that no enquiry was conducted as required under Rule 4 of the Rules by the Collector of the Puri District in respect of Anil Agarwal Foundation for the proposed establishment of Vedanta University in the acquired lands. Therefore, it is contended by him that enquiry by the Committee constituted under Sub-rule (2) of Rule 3 of the Companies Rules before or after issuance of the preliminary notifications is not conducted by the Collector though it is mandatory in law as held by the apex Court in the cases of Shanti Sports Club (supra) and City Montessori School (supra).

30. Another Senior Counsel Mr. Sanjit Mohanty appearing on behalf of the Company in addition to the submissions made by Mr. Anil Diwan, submits that Section 39 of the L.A. Act consent has been given by the State Government for acquisition of lands in its favour after examining the purpose for which the lands were sought to be acquired, as requested in its requisitions and the Memorandum of the agreement as required u/s 41 of the L.A. Act was executed by it in favour of the State Government and it has also complied with the procedure required to be followed as provided under Rule 4 of the Rules.

31. Mr. Mohanty, alternatively submits that there is no need for the State Government to conduct an enquiry u/s 5A of the L.A. Act, in the cases on hand

as there was no objection statement filed by the land owners except one petitioner and therefore there was no need for the Collector and the State Government to follow the procedure as provided u/s 5A. He further contends that there is substantial compliance of the rules 3 (2) and 4 of the Company Rules by the State Government, as the Core Committee was appointed by it as provided in Sub-section (2) of Section 40 of the L.A. Act for the purpose of conducting enquiry as required under Part VII to submit its report to the State Government regarding acquisition of lands in favour of the company. In support of this contention, he has placed reliance upon the decisions of the Supreme Court in the case of Talson Real Estate (P) Ltd. v. State of Maharashtra (2007) 13 SCC 186. Therefore, he has prayed for dismissal of the writ petitions of the owners contending that there is no merit in their cases. So far as the writ petitions filed by the persons claiming to be public spirited persons espousing the public cause seeking to quash the acquisition proceedings are concerned, learned Senior Counsel submits that the same are not maintainable in law for the reason that similar writ petition No. 6981 of 2008 filed earlier by nine persons, viz. Prasanna Kumar Mishra, Dwarika Mohan Mishra, Kalandi Charan Pradhan, Uma Charan Pradhan, Gagan Behari Pradhan, Aruna Chandra Pradhan, Parsuram Pradhan, Rama Pradhan & Sudarsan Gochhayat has been dismissed by this Court vide its order dated 9.5.2008 and therefore these PIL petitions are not maintainable at all. Further it is contended that neither public interest is affected nor public injury is caused to the public at large nor Rule of Law is violated as alleged in the PIL writ petitions and therefore prayed for dismissal of the same.

32. After careful consideration of the aforesaid rival legal contentions, we are answering the points against the State Government and the beneficiary company by assigning the following reasons.

33. In Shanti Sports Club and Another Vs. Union of India (UOI) and Others, , the apex Court held as under with regard to the procedure to be followed by the State Government to exercise its eminent domain power to acquire the lands in favour of the beneficiary company:

38. The decision to acquire the land for a public purpose is preceded by consideration of the matter at various levels of the Government. The Revenue Authorities conduct survey for determining the location and status of the land and feasibility of its acquisition for a public purpose. The final decision taken by the competent authority is then published in the Official Gazette in the form of a notification issued u/s 4 (1) of the Act. Likewise, declaration made u/s 6 of the Act is published in the Official Gazette. The publication of notifications u/s 4 (1) has twofold objectives. In the first place, it enables the landowner(s) to lodge objections against the proposed acquisition. Secondly, it forewarns the owners and Ors. interested persons not to change the character of the land and, at the same time, make them aware that if they enter into any transaction with respect to the land proposed to be acquired, they will do so at their own peril. When the land is acquired on behalf of a company, consent of the appropriate Government

is a must. The company is also required to execute an agreement in terms of Section 41 of the Act which is then published in the Official Gazette in terms of Section 42 thereof. As a necessary concomitant, it must be held that the exercise of power by the Government u/s 48(1) of the Act must be made known to the public at large so that those interested in accomplishment of the public purpose for which the land is acquired or the company concerned may question such withdrawal by making representation to the higher authorities or by seeking court's intervention. If the decision of the Government to withdraw from the acquisition of land is kept secret and is not published in the Official Gazette, there is every likelihood that unscrupulous landowners, their agents and wheeler-dealers may pull strings in the power corridors and clandestinely get the land released from acquisition and thereby defeat the public purpose for which the land is acquired. Similarly, the company on whose behalf the land is acquired may suffer incalculable harm by unpublished decision of the Government to withdraw from the acquisition.

34. In *City Montessori School Vs. State of Uttar Pradesh and Others*, the apex Court held as under:

13. The appellant is a private person. The notification u/s 4 and declaration in terms of Section 6 of the Act were issued in terms of the provisions contained in Part VII of the Act.

14. Section 40 of the Act provides for an enquiry in the manner prescribed in the Rules framed under the Act known as the Land Acquisition (Companies) Rules, 1963. The Act makes a distinction between an acquisition made for a public purpose and an acquisition made for the benefit of a company. Acquisition made at the instance of a company must be done in strict compliance with the provisions contained in the Act and the Rules framed thereunder. The Act being an expropriatory legislation and particularly when resorted to for the benefit of a private person requires scrupulous satisfaction of the statutory requirements.

15. In *Hindustan Petroleum Corporation Ltd. v. Darius Shapur Chenai* it was held: (SCC p. 640, para 29)

29. The Act is an expropriatory legislation. This Court in *State of M.P. v. Vishnu Prasad Sharma* observed that in such a case the provisions of the statute should be strictly construed as it deprives a person of his land without consent. (See also *Khub Chand v. State of Rajasthan* and *CCE v. Orient Fabrics (P) Ltd*) There cannot, therefore, be any doubt that in a case of this nature due application of mind on the part of the statutory authority was imperative.

16. In *Devinder Singh v. State of Punjab* it was held: (SCC p. 743, para 43)

43. Expropriatory legislation, as is well known, must be strictly construed. When the properties of a citizen are being compulsorily acquired by a 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 therefore. In the case of acquisition of land for a private company, existence of a public purpose being not a requisite criterion, Ors. statutory requirements call for strict compliance, being imperative in character

(Emphasis supplied)

35. In view of the law laid down by the Apex Court in the above referred cases, there is no substantial compliance of the provisions of the L.A. Act and Rules, as contended by the learned Advocate General and learned senior counsel Mr. Sanjit Mohanty. In the absence of the report of the District Collector as required u/s 5-A of the L.A. Act or in the absence of an enquiry under the above Companies Rules, report submitted by the District Collector to the State Government without following the procedure by forwarding the report to the Committee as constituted under Sub-rule (2) of Rule 3 by the State Government as mandated under Rule 4 (4) of the Land Acquisition (Companies) Rules, 1963, no declaration u/s 6 that the proposed lands are required for a public purpose should have been made by the State Government, as it has not consulted the Statutory committee and not submitted the report under Rule 4 to the State Government. The agreement as provided u/s 41 of the L.A. Act is not executed by the Company with the State Government agreeing to pay the compensation payable to the owners/interested persons in respect of their lands sought to be acquired. For non-compliance with the said mandatory statutory legal requirement on the part of the District Collector, Puri and the State Government, the impugned notifications published u/s 6 of the L.A. Act declaring that the lands proposed in the preliminary notifications are acquired in favour of the Foundation is void ab initio in law, for the reason that the State Government was required to satisfy itself that the proposed lands are in fact needed for a company. The State Government should not have made such declaration unless the compensation to be awarded to the owners of such proposed lands is to be paid by the Company and deposited with the State Government. The opinion formed by the State Government for declaration that the lands notified in the preliminary notifications are needed for the company for establishment of a University which was not in existence either under the Orissa Universities Act or the University Grant Commission Act at the time of initiation of the proceedings or at the time of publishing the declaration notifications u/s 6. Therefore, the satisfaction of the State Government for acquisition of lands by issuing Section 6 notifications declaring that the lands are needed for a non-existing University, has violated the human rights of thousands of land owners. Therefore the notifications are invalid and unconstitutional. Hence they are liable to be quashed.

36. Further the submission of Mr. Anil Diwan and Mr. Sanjit Mohanty, learned Counsel for the company that there was no need on the part of the State Government to conduct an enquiry u/s 5A of the L.A. Act, in the cases on hand as there was no objection statement filed by the land owners and therefore the owners have waived and acquiesced their right regarding enquiry as contemplated therein is not at all acceptable for the reason that the enquiry u/s

5-A of the L.A. Act is mandatory in nature, as held by the Hon"ble Supreme Court in the case of Shri Farid Ahmed Abdul Samad and Another Vs. The Municipal Corporation of the City of Ahmedabad and Another, , which reads as under:

24. We are clearly of opinion that Section 5-A of the Land Acquisition Act is applicable in the matter of acquisition of land in this case and since no personal hearing had been given to the appellants by the Commissioner with regard to their written objections the order of acquisition and the resultant confirmation order of the State Government with respect to the land of the appellants are invalid under the law and the same are quashed. It should be pointed out, it is not a case of failure of the Rules of natural justice as such as appeared to be the only concern of the High Court and also of the city civil court. It is a case of absolute non-compliance with a mandatory provision u/s 5-A of the Land Acquisition Act which is clearly applicable in the matter of acquisition under the Bombay Act.

(Emphasis supplied)

37. In the case of Shri Mandir Sita Ramji Vs. Lt. Governor of Delhi and Others, the Supreme Court has held that:

5. The learned Single Judge allowed the writ petition on the basis that the appellant had no opportunity of being heard by the Collector u/s 5-A. The duty to afford such an opportunity is mandatory. A decision by the Government on the objection, when the Collector afforded no opportunity of being heard to the objector, would not be proper. The power to hear the objection u/s 5-A is that of the Collector and not of the appropriate Government. It is no doubt true that the recommendation of the Land Acquisition Collector is not binding on the Government. The Government may choose either to accept the recommendation or to reject it; but the requirement of the section is that when a person's property is proposed to be acquired, he must be given an opportunity to show cause against it. Merely because the Government may not choose to accept the recommendation of the Land Acquisition Collector, even when he makes one, it cannot be said that he need not make the recommendation at all but leave it to the Government to decide the matter. In other words, the fact that the Collector is not the authority to decide the objection does not exonerate him from his duty to hear the objector on the objection and make the recommendation.

(Emphasis supplied)

38. In the case of Tej Kaur and Others, etc. Vs. State of Punjab and Others, , the Supreme Court placing reliance upon its earlier decision held as under

5. Similarly, in the decision in Shyam Nandan Prasad v. State of Bihar this Court observed that affording of opportunity of being heard to the objector during inquiry u/s 5-A is a must and that this provision embodies a just and wholesome principle that a person whose property is being, or is intended to be, acquired,

should have occasion to persuade the authorities concerned that his property be not touched for acquisition.

39. The apex Court had also occasion to consider similar question in the case of Babu Ram and Another Vs. State of Haryana and Another, . It is profitable to quote what the apex Court observed in the aforesaid case which reads under:

30. As indicated hereinabove in the various cases cited by Mr. Pradip Ghosh and, in particular, the decision in Krishnan Lal Arneja case, in which reference has been made to the observations made by this Court in Om Prakash case, it has been emphasized that a right u/s 5-A is not merely statutory but also has the flavour of fundamental rights under Articles 14 and 19 of the Constitution. Such observations had been made in reference to an observation made in the earlier decision in Gurdial Singh case and keeping in mind the fact that right to property was no longer a fundamental right, an observation was made that even if the right to property was no longer a fundamental right, the observations relating to Article 14 would continue to apply in full force with regard to Section 5-A of the L.A. Act.

(Emphasis supplied)

40. By non-filing of the statement of objections, the land owners have waived their right as urged by the learned Advocate General and Senior Counsel Mr. Sanjit Mohanty on behalf of the State Government and the beneficiary company respectively and their submissions are wholly untenable in law for the reason that the alleged waiver of their statutory rights would amount to violation of fundamental rights guaranteed under Articles 14, 19 and 21 of the Constitution, as the right u/s 5A of the L.A. Act is not merely statutory but also has the flavour of fundamental rights and such right is elevated to the status of human rights in view of the interpretation made by the apex Court in the aforesaid judgment and to this effect law has been laid down in the case of Delhi Administration Vs. Gurdip Singh Uban and Others, , the relevant paragraph from the above decision is extracted as hereunder:

53. Now objection u/s 5-A, if filed, can relate to the contention that (i) the purpose for which land is being acquired is not a public purpose, (ii) that even if the purpose is a public purpose, the land of the objector is not necessary, in the sense that the public purpose could be served by Ors. land already proposed or some Ors. land to which the objector may refer, or (iii) that in any event, even if this land is necessary for the public purpose, the special fact-situation in which the objector is placed, it is a fit case for omitting his land from the acquisition. Objection (ii) is personal to the land and Objection (iii) is personal to the objector.

54. Now in the (ii) and (iii) types of objections, there is a personal element which has to be pleaded in Section 5-A inquiry and if objections have not been filed, the notification must be conclusive proof that the said person had "waived" all objections which were personal and which he could have raised. However, so far as Objection (i) is concerned, even in case objections are not filed, the affected

party can challenge in Court that the purpose was not a public purpose.

(Emphasis supplied)

Further, for non-compliance of the statutory provisions of Sections 39, 40, 41, 42 and 44B of Part VII of the L.A. Act and Rule 4 of the Land Acquisition (Companies) Rules, 1963 by the State Government this Court has to exercise its judicial review power to quash the notifications. The MOU has been signed on behalf of Anil Agarwal Foundation by Mr. A.K. Samal, Vice President. He is not the competent person as the company must be represented by either is Principal Officer or officer specially authorized by the Board of Directors. The said memorandum of understanding is also not in compliance with Sub-sections (1) to (4) and (4A) of Section 41 agreeing for the terms as provided in the aforesaid provisions. Therefore, it is not an agreement in terms of Section 41 and the same is not published as required u/s 42 of the L.A. Act. The Collector has also not been duly authorized by way of notification as required in law to represent the Governor on behalf of the State. No such notification is available on record in this regard and the agreement does not validate the preliminary notifications issued in between 13.12.2006 to 22.12.2006 and consequently the declaration notifications are also bad in law. Therefore, the learned Sr. Counsel on behalf of the petitioners have rightly requested this Court to quash the notifications, as the same are published by the State Government in flagrant violation of the Statutory provisions of Chapter VII of the L.A. Act & Rules 3 & 4 of the Rules. From the perusal of the records produced by the State Government, it appears that except in respect of four land owners, the political executive passed order overruling the objections in respect of three and in respect of one person accepting the same. The files do not disclose that the political executive has applied its mind and granted approval as required u/s 6 declaration notification declaring the proposed lands in favour of the beneficiary company for establishment of University.

41. In this regard it would further be appropriate for us to advert to the decision of the Supreme Court in the case of Srinivasa Cooperative House Buildings Society Ltd. Vs. Madam Gurumurthy Sastry and Others, , wherein the Court has held as under:

4. The Act recognises dichotomy, namely, acquisition for a public purpose in Chapter II and acquisition for a private purpose of a type restricted in Chapter VII. There is no provision in the Act to say that when a land is required for a company, it may also be for a public purpose. Therefore, if a company, namely a Cooperative Society registered under the Central or State Cooperative Societies Act, preceding 1984 Amendment Act, had to acquire the land it had to do so in strict compliance with Chapter VII. If the company, (Cooperative Society) requires land for any purpose Ors. than those mentioned in Section 40, then no compulsory acquisition under the Act is possible. Part VII nowhere authorises the Government to apply the provision of that part to private acquisition. A.P. State Amendment Act expressly included acquisition for providing house sites for the

poor; for the execution of any housing scheme under A.P. Housing Boards Act; godowns for a cooperative society as for public and urgent purposes. By necessary implication the acquisition for a Private Cooperative House Building Society to construct houses for its members must be a private purpose.

8. Explanation.- "Private company" and "Government company" shall have the meanings respectively assigned to them in the Companies Act, 1956 (1 of 1956). A plain reading of the fascicule of these provisions clearly indicates the distinction, statute has envisaged, namely, acquisition for a public purpose and acquisition for a private purpose. Even the acquisition for a company, unless utilization of the land so acquired is integrally connected with public use, resort to the compulsory acquisition under Chapter VII cannot be had. Even when Chapter VII was invoked, the requirements of Section 40 and Section 41 are mandatory and shall be strictly complied with. It is clearly discernible from scheme of the acquisition in Chapter VII that the land can be acquired for the erection of dwelling-houses for workmen employed by the company or for the provisions of amenities directly connected therewith or needed for the construction of some building or work for a company which is engaged or is taking steps for engaging itself in any industry or work which is for a public purpose or is needed for the construction of some work which is likely to prove useful to the public. Notwithstanding anything contained in the Act, i.e., despite the compliance with Chapter VII, no land should be acquired under Chapter VII except for the purpose mentioned in Clause (a) of Sub-section (1) of Section 40, for a private company which is not a Government company and that such company shall not be entitled after the acquisition under Chapter VII to transfer the said land or any part thereof by sale, mortgage, gift, lease or otherwise except with the previous sanction of the appropriate Government. The object, therefore, appears to be that the land acquired under Chapter VII shall always remain to serve the public purpose, beneficial to the public. It is not open to the Government to waive any of the provisions in Part VII. The provisions contained therein have mandatory operation. The object of Sections 44-A and 44-B appears to be that they intend to safeguard public interest. The company acquiring the land for a public purpose in Chapter VII may, after the acquisition has become final, divert the land for private profit motive, defeating the purported public purpose for which the acquisition was made. The Government company obviously does not alienate such property for private gain since the profits merge into public fund. While the private company could get acquisition but thereafter become free to dispose of the property. Therefore, the acquisition for a private company get limited only for purposes envisaged u/s 40(1)(a) and thereby the public purposes envisaged therein get safeguarded and protected. The dominant purpose of public utility pervades the provisions in Chapter VII of the Act.

(Emphasis added).

42. It is seen that issuance of Section 4(1) notifications in favour of the beneficiary company was made on the basis of the requisition made by Vedanta

Foundation but not Anil Agarwal Foundation which is the beneficiary Company. It is an undisputed fact that Vedanta Company was converted into Sterlite Foundation and thereafter in the year 2006 before the acquisition proceedings were sought to be initiated, it claimed that it has converted into Anil Agarwal Foundation as a public company u/s 25 of the Act, is the case sought to be made out on behalf of the beneficiary company to justify the impugned notifications. Therefore, the initiation of the proceedings by issuance of notifications u/s 4(1) of the L.A. Act was made stating that the proposed lands are needed by the company for establishment of Vedanta University which is not in existence either under the State Universities Act or the U.G.C. Act and therefore the purpose for which the proposed acquisition of lands was made by issuing preliminary notifications is bad in law. The fact of non-existence of the University is evident from the Ordinance promulgated by the State Government as on the date of initiation of the acquisition proceedings. Hence, the publication of the Section 4(1) preliminary notifications proposing to acquire the lands in question is void ab initio in law. The publication of the said notifications is also void ab initio for one more strong reason, namely, that the Company in favour of which the lands were sought for acquisition according to the State Government and the beneficiary company is a public company converted u/s 25 of the Act, 1956. The acquisition of lands for establishment of University, which is for educational purpose is permissible u/s 3 (f)(vi) of the Act only in respect of educational scheme sponsored by the Government, or by any authority established by Government for carrying out any such scheme, or with the prior approval of the appropriate Government, by a local authority, or a society registered under the Societies Registration Act, 1860, or under any corresponding law for the time being in force in a State or a co-operative society within the meaning of any law relating to co-operative societies for the time being in force in any State. Therefore the provision of Section 44-B of the L.A. Act is attracted to the facts of this case for the reason that we have already answered the point No. 1 against the company by recording reasons in the judgment holding that it is not a public company and it has continued as a private limited guarantee company. The said finding is on the basis of undisputed fact that the beneficiary company does not have share capital and it was registered as a private limited guarantee company and the same cannot be converted as a public company u/s 25 of the Act. Therefore, the acquisition of lands for a private company by the State Government under the provisions of the L.A. Act is not permissible except for the purpose as mentioned in Clause (a) of Sub-section (1) of Section 40 of the Act as stated u/s 44-B of the L.A. Act. Section 40 (1) Clause (a) of the L.A. Act provides for acquisition of lands in favour of the company for the erection of dwelling houses for workmen employed by the company or for the provision of amenities directly connected therewith. The acquisition of lands in favour of the beneficiary company undisputedly is not for the aforesaid purpose. Therefore, the initiation of the proceedings from the beginning by the State Government u/s 4(1) of the L.A. Act, by itself is void ab initio in law as the same is in flagrant violation of Section 44B of the L.A. Act. Further previous consent given by the State

Government without complying with the mandatory requirement of Rule 4 of the Rules in not conducting an inquiry by the District Collector for the reason that according to the State Government it is not required is the legal contention urged, the same is reiterated by the beneficiary company, which contention of them is wholly untenable in law for the reason that Section 39 of the L.A. Act clearly contemplates that previous consent of the State Government is required to put the Land Acquisition Act in force in order to acquire lands for any company, i.e., including a private company before publishing Section 4(1) Notifications. Learned Senior Counsel Mr. Jayant Das on behalf of the petitioners has rightly rebutted the said legal contention by aptly placing strong reliance upon Section 4 (1) amendment of the L.A. Act by including the phrase "or for a company" which was inserted by Act 38 of 1923 u/s 2 (o) of the amendment Act. The above said contention of the learned Senior Counsel has to be accepted for the reason that the interpretation made by him by placing reliance upon the phrase "or for a company" inserted by Section 2 (o) of the Act 38 of 1923 is tenable in law. If the interpretation sought to be made by the learned Advocate General and the learned Senior Counsel appearing for the beneficiary company that Section 4 is not mentioned in Section 39 of the Act and that the previous consent of the State Government prior to publishing the Section 4(1) notification is not required is accepted, then it would render Section 39 and Part VII of the L.A. Act read with rules 3 and 4 of the Rules otiose or redundant. That is not the object of the legislature in introducing Part VII relating to procedure to be followed for acquisition of land in favour of a company. In view of the said amendment, Section 39 must be read harmoniously with Section 4 (1) of the L.A. Act read with the Company Rules to give purposeful interpretation to achieve the object of the L.A. Act. In the absence of non mention of Section 4 of the Act in the said provision of Section 39 of the L.A. Act, the provisions of the Land Acquisition Act including Sections 4 to 16 should be read into the said provision to put the provisions of the L.A. Act in force in order to acquire lands for any company by following the mandatory provisions of Part VII of the L.A. Act read with the Land Acquisition (Companies) Rules. The said interpretation of the provision of Section 39 of the L.A. Act would be harmonious to achieve the object and intendment of the provisions of Part VII of the L.A. Act. Further, the object of framing such rules by the Central Government in exercise of its power u/s 55 of the Act is for the purpose of carrying out the purposes of the provisions of Part VII of the L.A. Act and such rules are made for the guidance of the State Government and the officers of the Central Government and of the State Government to give effect to the provisions of the L.A. Act. As could be seen from the Rules, the sole object of framing such rules is to comply with the provisions of Part VII of the Land Acquisition Act by following strictly the procedure contemplated therein as the same is held to be mandatory by the apex Court in number of decisions viz. *Narindrajit Singh and Ranjit Singh and Others Vs. The State of U.P. and Others*, ; *State of Mysore Vs. Abdul Razak Sahib*, ; *General Government Servants Cooperative Housing Society Ltd., Agra and Others Vs. Sh. Wahab Uddin and Others*, ; *Collector (District Magistrate)*

Allahabad and Another Vs. Raja Ram Jaiswal, ; Mohan Singh and Others Vs. International Airport Authority of India and Others, ., To acquire land in favour of company, under the Land Acquisition Act at its instance the State Government is required to find out (i) whether the company has made its best endeavour to find out lands in the locality for the purpose of 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 negotiations have failed, (iii) that the land proposed to be acquired is suitable for the purpose and (iv) that the area of land proposed to be acquired is not excessive. Sub-rule (2) of Rule 4 provides that the Collector after giving reasonable opportunity to the company to make any representation hold an enquiry into the matters referred to in Sub-rule (1) Clauses (i) to (iv) of the Rule 4 referred to above. Further it is the duty of the Collector, if the lands proposed to be acquired are agricultural lands, to consult the Senior Agricultural Officer of the district whether or not such lands are good agricultural lands and also determine having regard to the provisions of Sections 23 and 24 of the L.A. 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. Sub-rule (3) of Rule 4 contemplates that the Collector after holding the enquiry under Sub-rule (2) of the Rule 4 shall submit the report to the State Government and a copy of the same shall be forwarded by the Government to the Committee constituted under Rule 3 (2) of the Rules. Under Sub-rule (4) of Rule 4 it is the bounden duty of the State Government before declaring that the proposed lands in the preliminary notifications are required for the beneficiary Company by publishing the notifications u/s 6 of the L.A. Act to consult the Committee and also consider the report submitted by the District Collector under Sub-rule (3) of Rule 4 and the report, if any, submitted u/s 5-A of the Act and that the agreement u/s 41 of the Act has been executed by the Company. In the instant case undisputedly, the agreement is executed by the beneficiary company in favour of the State Government not incorporating all the terms and conditions as provided under Sub-sections (1) to (5) of Section 41 of the L.A. Act and the same is not published as required u/s 42 of the Act. The State Government is required to be satisfied with the report, if any, of the Collector u/s 5-A, Sub-section (2), or on the report of the officer making an enquiry u/s 40 before publishing the final notifications u/s 6 of the L.A. Act that the proposed acquisition of lands is for the purposes referred to in Clause (a) of Sub-section (1) of Section 40 and require the company to enter into an agreement with the State Government as required u/s 41 for the matters, i.e.(1) the payment to the State Government of the cost of the acquisition, (2) the transfer, on such payment, of the land to the company and (3) the terms on which the lands shall be held by the company. In the absence of such agreement published by the State Government u/s 42, as soon as may be after its execution by the beneficiary company, the publication of Section 6 notifications declaring that the proposed lands are required for the beneficiary Company is void ab initio in law. In this regard it is necessary for us to extract the relevant paragraphs 31 and 32 from the decision of the Apex Court

in the case of Babu Verghese and Others Vs. Bar Council of Kerala and Others, in support of the legal contention that "where a power is given to do a certain thing in a certain way, the thing must be done in that way or not at all". The above said paragraphs are extracted in support of the conclusions and reasons assigned by us.

31. It is the basic principle of law long settled that if the manner of doing a particular act is prescribed under any statute, the act must be done in that manner or not at all. The origin of this rule is traceable to the decision in Taylor v. Taylor (1875) 1 Ch D 426 which was followed by Lord Roche in AIR 1936 253 (Privy Council) who stated as under:

Where a power is given to do a certain thing in a certain way, the thing must be done in that way or not at all.

32. This rule has since been approved by this Court in Rao Shiv Bahadur Singh and Another Vs. The State of Vindhya Pradesh, and again in Deep Chand Vs. The State of Rajasthan, . These cases were considered by a three-Judge Bench of this Court in State of Uttar Pradesh Vs. Singhara Singh and Others, and the rule laid down in Nazir Ahmad case was again upheld. This rule has since been applied to the exercise of jurisdiction by courts and has also been recognised as a salutary principle of administrative law.

43. It is also profitable to notice what the apex Court held on the proposition of law in the case of Chairman, Indore Vikas Pradhikaran Vs. Pure Industrial Cock and Chem. Ltd. and Others, by referring to its earlier large number of decisions:

58. Expropriatory legislation, as is well-known, must be given a strict construction.

59. In Hindustan Petroleum Corporation Ltd. Vs. Darius Shapur Chenai and Others, construing Section 5-A of the Land Acquisition Act, this Court observed:

6. It is not in dispute that Section 5-A of the Act confers a valuable right in favour of a person whose lands are sought to be acquired. Having regard to the provisions contained in Article 300A of the Constitution, the State in exercise of its power of "eminent domain" may interfere with the right of property of a person by acquiring the same but the same must be for a public purpose and reasonable compensation therefore must be paid.

It was further stated: (SCC p. 640, para 29)

29. The Act is an expropriatory legislation. This Court in State of M.P. v. Vishnu Prasad Sharma¹⁰ observed that in such a case the provisions of the statute should be strictly construed as it deprives a person of his land without consent. (See also Khub Chand and Others Vs. State of Rajasthan and Others, and Collector of Central Excise, Ahmedabad Vs. Orient Fabrics Pvt. Ltd.,

There cannot, therefore, be any doubt that in a case of this nature due application of mind on the part of the statutory authority was imperative.

In *State of Rajasthan and Others Vs. Basant Nahata*, it was opined: (SCC p.102, para 59)

In absence of any substantive provisions contained in a parliamentary or legislative act, he cannot be refrained from dealing with his property in any manner he likes. Such statutory interdict would be opposed to one's right of property as envisaged under Article 300A of the Constitution.

In *State of U.P. and Others Vs. Manohar*, Constitution Bench of this Court held: (SCC p.129, paras 7-8)

7. Ours is a constitutional democracy and the rights available to the citizens are declared by the Constitution. Although Article 19(1)(f) was deleted by the Forty-fourth Amendment to the Constitution, Article 300A has been placed in the Constitution, which reads as follows:

300-A. Persons not to be deprived of property save by authority of law.-No person shall be deprived of his property save by authority of law.

8. This is a case where we find utter lack of legal authority for deprivation of the respondent's property by the appellants who are State authorities.

In *Jilubhai Nanbhai Khachar v. State of Gujarat*, 1995 Supp (1) SCC 596 the law is stated in the following terms: (SCC p. 622, para 34)

34. The right of eminent domain is the right of the sovereign State, through its regular agencies, to reassert, either temporarily or permanently, its dominion over any portion of the soil of the State including private property without its owner's consent on account of public exigency and for the public good. Eminent domain is the highest and most exact idea of property remaining in the Government, or in the aggregate body of the people in their sovereign capacity. It gives the right to resume possession of the property in the manner directed by the Constitution and the laws of the State, whenever the public interest requires it. The term "expropriation" is practically synonymous with the term "eminent domain."

It was further observed: (SCC p. 627, para 48)

48. The word "property" used in Article 300A must be understood in the context in which the sovereign power of eminent domain is exercised by the State and property expropriated. No abstract principles could be laid. Each case must be considered in the light of its own facts and setting. The phrase "deprivation of the property of a person" must equally be considered in the fact situation of a case. Deprivation connotes different concepts. Article 300A gets attracted to an acquisition or taking possession of private property, by necessary implication for public purpose, in accordance with the law made by Parliament or a State Legislature, a rule or a statutory order having force of law. It is inherent in every sovereign State by exercising its power of eminent domain to expropriate private property without owner's consent. Prima facie, State would be the judge to

decide whether a purpose is a public purpose. But it is not the sole judge. This will be subject to judicial review and it is the duty of the court to determine whether a particular purpose is a public purpose or not. Public interest has always been considered to be an essential ingredient of public purpose. But every public purpose does not fall under Article 300A nor every exercise of eminent domain an acquisition or taking possession under Article 300A. Generally speaking preservation of public health or prevention of damage to life and property are considered to be public purposes. Yet deprivation of property for any such purpose would not amount to acquisition or possession taken under Article 300A. It would be by exercise of the police power of the State. In Ors. words, Article 300A only limits the powers of the State that no person shall be deprived of his property save by authority of law. There has to be no deprivation without any sanction of law. Deprivation by any other mode is not acquisition or taking possession under Article 300A. In Ors. words, if there is no law, there is no deprivation. Acquisition of mines, minerals and quarries is deprivation under Article 300A.

(Emphasis added)

44. In view of the above legal position laid down by the Apex Court of which relevant paragraphs have been extracted by us, the legal contention urged by the learned Senior Counsel on behalf of the petitioners that after the preliminary notifications are published enquiry is necessary either under Rule 4 by the District Collector or u/s 40 Sub-section (3) of the L.A. Act by the enquiry officer appointed by the State Government as provided under Sub-section (2) of Section 40, and it is mandatory in law, must be accepted by this Court by rejecting the submissions made by the learned Advocate General and Senior Counsel on behalf of the company.

45. The aforesaid decisions of the Apex Court which have been dealt with by us and relevant paragraphs of which are extracted upon which reliance has been rightly placed by the learned Senior Counsel on behalf of the petitioners and, therefore, the same must be accepted as the legal principles laid down in those cases aptly apply to the fact situation. For the reasons stated supra, the reliance placed by the learned Advocate General and Senior Counsel for the Company upon the decisions of the Apex Court in the case of Vijay Cotton & Oil Mills Ltd. v. State of Gujarat, reported in (1969) 2 SCR 60, in the case of State of Rajasthan and Others Vs. D.R. Laxmi and Others, and in the case of Swaika Properties Pvt. Ltd. and Another Vs. State of Rajasthan and Others, stating that the procedure as contemplated under Rules 3(2) and 4 of the Company Rules to be followed by the Collector and the State Government is not mandatory is misplaced and further reliance placed upon the observations made by the three Judge Bench of the Supreme Court in the case of Swasthya Raksha Samiti Rati Chowk v. Chaudhary Ram Harakh Chand and Ors., (supra) is also misplaced as the Apex Court has referred the matter to the larger Bench. By careful reading of paragraphs 5 and 6 of the aforesaid judgment, it is noticed that the reason for

reference to larger Bench is for non-consideration of the Constitution Bench decision in Babu Barkya (supra) wherein the Constitution Bench indicated that all the requirements of Part VII of the Act especially Section 40 could be considered in Section 5A enquiry itself which would include all and any objection of the land owners including the objection in regard to acquisition in favour of a company. Having made that observation further at paragraph 6, the apex Court was of the opinion that the objections that could possibly be raised in Rule (4) enquiry can also be raised in a Section 5A enquiry and in the absence of any specific requirement in Rule (4) as to the issuance of notice to the land owners of being heard in such an enquiry hearing the land owners at the stage of Rule (4) enquiry would lead only to duplication and cause delay. Having made such observation, the said Bench referred the matter to the larger Bench. While referring to the larger Bench it has not noticed the Constitution Bench decision in the case of State of U.P. and Others Vs. Manohar, which was decided on 15.12.2004 and was very much available for consideration. In the said decision, the Constitution Bench clearly enunciated the law that after deletion of Article 19(1)(f) by 44th amendment to the Constitution and insertion of Article 300A, no person shall be deprived of his property save by authority of law which means that Rule (4) enquiry must be strictly adhered to and further what objections could be taken in Rule (4) enquiry can also be raised u/s 5A enquiry is the observation of the Constitution Bench in Babu Barkya (supra). In the instant case no such 5-A enquiry is also held. Therefore, reliance placed upon the three Judge Bench decision in Swasthya Raksha Samiti (supra) by the learned Advocate General and senior counsel for the State Government and the beneficiary Company is misplaced. Apart from the said legal position, the apex Court in the Case of Babu Verghese and Ors. v. Bar Council of kerala (supra) after referring to its earlier decision and Privy Council decisions at paragraphs 31 and 32 extracted earlier has clearly laid down the law that the procedure laid down in the Statute must be strictly adhered to otherwise the action is void ab initio in law. Therefore, we have to accept the legal contention urged on behalf of the petitioners as the same is well founded in view of the mandatory provisions of the L.A. Act, Rules, Principles of natural justice and the Constitution Bench decisions of the Apex Court and Ors. decisions referred to above by us upon which reliance has rightly been placed by the learned Senior Counsel on behalf of the petitioners.

46. Since the action of the State Government entailed serious civil consequences to the land owners, the principles of natural justice should have been complied with even though the owners did not file their objections within 30 days from the date of service of notice along with the preliminary notification upon them. This view of ours is supported by the decisions of the seven Judge Constitution Bench of the Apex Court in the case of Mrs. Maneka Gandhi Vs. Union of India (UOI) and Another, vide paragraphs 57, 58 and 61, which read as under:

... although there are no positive words in the statute requiring that the party shall be heard, yet the justice of the common law will supply the omission of the

legislature. The principle of audi alteram partem which mandates that no one shall be condemned unheard, is part of the rules of natural justice. In fact, there are two main principles in which the rules of natural justice are manifested, namely, Nemo Judex in Sua Causa and audi alteram partem....

...Natural justice is a great humanizing principle intended to invest law with fairness and to secure justice and over the years it has grown into a widely pervasive rule affecting large areas of administrative action.. The enquiry must always be: does fairness in action demand that an opportunity to be heard should be given to the person affected ?

...The law must now be taken to be well settled that even in an administrative proceeding, which involves civil consequences, the doctrine of natural justice must be held to be applicable.

47. The action of the State Government in acquiring vast extent of lands for establishment of a University violates the human rights and fundamental rights of the land owners and the residents of the locality guaranteed under Articles 14, 19 and 21 and Article 300A of the Constitution and statutory rights conferred upon the land owners u/s 4, 5-A, 6, Sections 39,41,42 and 44B of the L.A. Act read with Rules 3 and 4 of the Company Rules.

48. Even accepting for the sake of argument the contention urged on behalf of the State and the beneficiary company that by non-filing of statement of objections the land owners whose lands have been acquired have waived and acquiesced their rights and have lost their statutory right of hearing and, therefore, there was no statutory obligation on the part of the Collector to conduct an enquiry, then the State Government was required to give its previous consent as required u/s 39 in favour of the Company and got the agreement executed by the company in favour of the State Government and thereafter the mandatory procedure as provided under Rule 3(2) and rules 4 (1) to (3) was required to be complied with by the District Collector in conducting the enquiry and thereafter his report should have been submitted to the State Government who in its turn should have sent the same to the Committee seeking their views in the matter before the exercise of the statutory power by the State Government u/s 6 of the L.A. Act to declare that the proposed lands are acquired for the benefit of the beneficiary company by publishing the notifications. Undisputedly, this requirement of law has not been fulfilled by the State Government as could be seen from the information furnished to one of the petitioners under the Right to Information Act. Section 6 provides for declaration by the State Government which is subject to the provisions of Part VII of the Act after the State Government is satisfied considering the report, if any, made u/s 5-A Sub-section (2) that the land is needed for a company is held not mandatory then that would be in contravention of the provisions of Part VII of the L.A. Act. The Central Government in exercise of the statutory power u/s 55 has framed the rules called the Land Acquisition (Companies) Rules referred to supra for carrying out the purposes of Part VII of the L.A. Act giving guidance to the State

Government and officers after following the procedure as provided in the second proviso to the said provision the publication of Section 6 of the L.A. Act should have been made by the State Government. The rules framed by the Central Government for the purpose of carrying out the purpose of Part VII shall be held as mandatory for the reason that the statutory rights, fundamental and constitutional rights of the land owners will be taken away by the State Government in exercise of its eminent domain power in acquiring their lands. Therefore, the seven Judge Bench in Maneka Gandhi's case has rightly held that if any action of the State Government or authority entails civil consequences even in the absence of the statutory provision of hearing, principles of natural justice shall be read into the statute. In this view of the matter and also for the reason stated in Section 5-A(2) and Rule 4 of the Rules and the decisions of the Supreme Court with regard to conduct of enquiry and submission of report, reasonable opportunity should have been given to the land owners and the same should have been strictly followed by the State Government or its officers. Therefore, the action of the State Government in not following the mandatory procedure as provided in the statutory provisions u/s 5-A(2) or the Rules 3 and 4 has rendered the action of the State Government void ab initio in law. For the aforesaid reasons, the reliance placed both by learned Senior Counsel Shri Anil Diwan and Shri Sanjit Mohanty on the observation made by the apex Court in the case of Swasthya Raksha Samiti Rati Chowk v. Chaudhary Ram Harakh Chand, (supra) in paras 5 & 6 is not applicable to the fact situation. Therefore, the contention urged on this behalf by them is liable to be rejected. Accordingly, the same is rejected by accepting the legal submission of the learned Sr. Counsel on behalf of the petitioners.

49. The contention urged by learned Advocate General for the State and Mr. Anil Diwan, learned Counsel on behalf of the beneficiary company that by not filing the objections to the preliminary notifications proposing to acquire the lands in question, land owners have waived and acquiesced their rights to question the non-conducting of enquiry by the District Collector either u/s 5-A or under Rule 4 of the rules is both on facts and in law is untenable for the reasons stated hereunder. Pursuant to our direction, the learned Government Advocate made available to us the record of the acquisition proceedings in relation to the acquired lands from the stage of publication of the preliminary notification till the date of alleged taking over of possession of the acquired lands. As could be seen from the records, in fact no notice along with the preliminary notification was issued and served upon either the owners or interested persons of the acquired lands as required in laws. The order-sheet of the records maintained by the Collector would disclose that the notice by way of beat of drum was given in the villages where the lands are situated which is not in compliance with the provision of Section 4(1) which says that the Collector shall cause public notice of the substance of such notification to be given at convenient places in the locality. Section 5-A requires that any person interested in any land which has been notified u/s 4(1) within thirty days from the date of publication of the

notification to object to the acquisition of the land. For this purpose notice should be served upon such person but that has not been done in the cases on hand and also in respect of the Ors. land owners. Therefore, the question of filing of objection by the land owners/person interested did not arise. The second proviso to Section 6 provides that no declaration of the proposed lands under the said section shall be made unless the compensation to be awarded for such property is to be paid by a company. It is noticed from the proceedings recorded in the original files that the compensation to be awarded has been determined by the Collector on the basis of sale statistics secured from the District Sub-Registrar and the value of the land shown in the sale statistics has been treated as the market value and awarded the same as compensation without following the procedure contemplated under Sections 9 and 10 by issuing notice to the owners of the land/persons interested calling upon them to file claim petition for determination of the compensation amount for determining the market value of the property as provided in Sections 23 and 24 of the L.A. Act. Since the Collector has not complied with the mandatory requirement of issuing and serving individual notice to the land owners/interested persons, the question of waiver or acquiescence of the right of the land owners as contended by the learned Senior Counsel on behalf of the company do not arise at all and the further enquiry is not required to be conducted as provided u/s 5-A (2) or Rule 4 is wholly untenable in law and therefore the said contention of the opposite parties cannot be accepted.

50. It is noticed from the original files of the State Government that without following the mandatory procedure of issuing notice under Sections 9 and 10 to the owners/interested persons for filing claim statement to award compensation by determining the market value of the land u/s 11, the awards are said to have been passed and proviso to Section 11 which clearly states that such award should be approved by the State Government for the purpose to constitute it a valid award. From the records it is not noticed nor shown from any Ors. records that the draft awards passed by the Collector was approved by the State Government. Therefore, we have to say that no award in terms of Section 11 is passed in respect of the acquired lands and the same has not been communicated to the land owners/interested persons as required u/s 12(2) of the L.A. Act to work out their statutory rights as provided u/s 18 of the Act. In the absence of valid awards, the question of taking over possession and issuing certificate of possession to the beneficiary company by transferring the lands in its favour by the State Government also factually and legally incorrect for the reason that in the absence of valid awards the question of taking over possession of the land and handing over the same to the beneficiary company also did not arise. Except the alleged taking over possession of the land from the owners without serving the award as required u/s 12(2) and further calling upon them to deliver possession to the State Government and vesting of such land with the State Government and thereafter delivering the same in favour of the beneficiary company is also factually and legally invalid in law for the reason that to

evidence the fact of taking over possession from the land owners, no Gazette Notification u/s 16 of the L.A. Act is available in the records. In the absence of such Gazette Notification, the claim made by the State Government that awards were passed, possession of the lands have been taken by the State Government and certificate of possession has been given in favour of the company after transferring possession of the lands is only a paper delivery but no physical or actual possession was either taken from the land owners or acquired lands vested with the State Government and thereafter transferred in favour of the beneficiary company.

51. There can be no dispute with regard to the settled legal proposition of law that if an order is bad in its inception, it cannot be made good subsequently. If the basis of an order falls being illegal, invalid or void the consequential order cannot be given effect to as it automatically becomes inoperative or in Ors. words if the basic order stands vitiated, the consequential order automatically falls. It is necessary to peruse what the apex Court said in this regard in the case of *Badrinath Vs. Government of Tamil Nadu and Others*, , which reads as under:

This flows from the general principle applicable to consequential orders. Once the basis of a proceeding is gone, may be at a later point of time by order of a superior authority, any intermediate action taken in the meantime- like the recommendation of the State and by the UPSC and the action taken thereon- would fall to the ground. This principle of consequential orders which is applicable to judicial and quasi-judicial proceedings is equally applicable to administrative orders.

52. It is contended by the learned Senior Counsel for the petitioners that the exercise of the eminent domain power by the State Government at the request of Vedanta Foundation and issuing preliminary notifications and proceeding with the further proceedings in granting previous consent as provided u/s 39 of the L.A. Act and publication of final notifications in respect of the lands covered under the preliminary notifications declaring that those lands are required in favour of the beneficiary company to establish a University which is not permissible under the Land Acquisition Act in view of Section 44(B) read with Section 40(1)(a) of the L.A. Act and the acquisition of vast extent of lands of thousands of acres of both private owners, Temple land and lease of State Government lands at the instance of Vedanta Foundation's requisitions and Agreement executed by the Anil Agarwal Foundation in favour of the State Government after publication of preliminary notifications is nothing but fraud played by them on the State Government to exercise its power. In this context, it is necessary to extract what the apex Court said in *Commissioner of Customs, Kandla Vs. Essar Oil Limited and Others*, , at page 376:

30. A "fraud" is an act of deliberate deception with the design of securing something by taking unfair advantage of another. It is a deception in order to gain by another's loss. It is a cheating intended to get an advantage. (See *S.P. Chengalvaraya Naidu v. Jagannath*.)

31. "Fraud" as is well known vitiates every solemn act. Fraud and justice never dwell together. Fraud is a conduct either by letter or words, which includes the Ors. person or authority to take a definite determinative stand as a response to the conduct of the former either by words or letter. It is also well settled that misrepresentation itself amounts to fraud. Indeed, innocent misrepresentation may also give reason to claim relief against fraud. A fraudulent misrepresentation is called deceit and consists in leading a man into damage by wilfully or recklessly causing him to believe and act on falsehood. It is a fraud in law if a party makes representations, which he knows to be false, and injury enures therefrom although the motive from which the representations proceeded may not have been bad. An act of fraud on court is always viewed seriously. A collusion or conspiracy with a view to deprive the rights of the others in relation to a property would render the transaction void ab initio. Fraud and deception are synonymous. Although in a given case a deception may not amount to fraud, fraud is anathema to all equitable principles and any affair tainted with fraud cannot be perpetuated or saved by the application of any equitable doctrine including *res judicata*. (See *Ram Chandra Singh v. Savitri Devi.*)

32. "Fraud" and collusion vitiate even the most solemn proceedings in any civilised system of jurisprudence. It is a concept descriptive of human conduct. Michael Levi likens a fraudster to Milton's sorcerer, Comus, who exulted in his ability to "wing me into the easy-hearted man and trap him into snares". It has been defined as an act of trickery or deceit. In Webster's Third New International Dictionary "fraud" in equity has been defined as an act or omission to act or concealment by which one person obtains an advantage against conscience over another or which equity or public policy forbids as being prejudicial to another. In Black's Legal Dictionary, "fraud" is defined as an intentional perversion of truth for the purpose of inducing another in reliance upon it to part with some valuable thing belonging to him or surrender a legal right; a false representation of a matter of fact whether by words or by conduct, by false or misleading allegations, or by concealment of that which should have been disclosed, which deceives and is intended to deceive another so that he shall act upon it to his legal injury. In Concise Oxford Dictionary, it has been defined as criminal deception, use of false representation to gain unjust advantage; dishonest artifice or trick. According to Halsbury's Laws of England, a representation is deemed to have been false, and therefore a misrepresentation, if it was at the material date false in substance and in fact. Section 17 of the Indian Contract Act, 1872 defines "fraud" as act committed by a party to a contract with intent to deceive another. From dictionary meaning or even otherwise, fraud arises out of deliberate active role of the representator about a fact, which he knows to be untrue yet he succeeds in misleading the representee by making him believe it to be true. The representation to become fraudulent must be of a fact with knowledge that it was false. In a leading English case i.e. *Derry v. Peek*, what constitutes "fraud" was described thus (All ER p. 22 B-C):

(Fraud is proved when it is shown that a false representation has been made (i)

knowingly, or (ii) without belief in its truth, or (iii) recklessly, careless whether it be true or false.

But "fraud" in public law is not the same as "fraud" in private law. Nor can the ingredients, which establish "fraud" in commercial transaction, be of assistance in determining fraud in administrative law. It has been aptly observed by Lord Bridge in *Khawaja v. Secy. of State for Home Deptt.*, that it is dangerous to introduce maxims of common law as to effect of fraud while determining fraud in relation to statutory law. "Fraud" in relation to statute must be a colourable transaction to evade the provisions of a statute.

If a statute has been passed for some one particular purpose, a court of law will not countenance any attempt which may be made to extend the operation of the Act to something else which is quite foreign to its object and beyond its scope." Present-day concept of fraud on statute has veered round abuse of power or mala fide exercise of power. It may arise due to overstepping the limits of power or defeating the provision of statute by adopting subterfuge or the power may be exercised for extraneous or irrelevant considerations. The colour of fraud in public law or administration law, as it is developing, is assuming different shades. It arises from a deception committed by disclosure of incorrect facts knowingly and deliberately to invoke exercise of power and procure an order from an authority or tribunal. It must result in exercise of jurisdiction which otherwise would not have been exercised. That is misrepresentation must be in relation to the conditions provided in a section on existence or non-existence of which power can be exercised. But non-disclosure of a fact not required by a statute to be disclosed may not amount to fraud. Even in commercial transactions non-disclosure of every fact does not vitiate the agreement. "In a contract every person must look for himself and ensures that he acquires the information necessary to avoid bad bargain." In public law the duty is not to deceive." (See *Shrisht Dhawan v. Shaw Bros.*, SCC p. 554, para 20.)

33. In that case it was observed as follows: (SCC p. 553, para 20)

20. Fraud and collusion vitiate even the most solemn proceedings in any civilised system of jurisprudence. It is a concept descriptive of human conduct. Michael Levi likens a fraudster to Milton's sorcerer, Comus, who exulted in his ability to, "wing me into the easy-hearted man and trap him into snares". It has been defined as an act of trickery or deceit. In Webster's Third New International Dictionary fraud in equity has been defined as an act or omission to act or concealment by which one person obtains an advantage against conscience over another or which equity or public policy forbids as being prejudicial to another. In Black's Legal Dictionary, fraud is defined as an intentional perversion of truth for the purpose of inducing another in reliance upon it to part with some valuable thing belonging to him or surrender a legal right; a false representation of a matter of fact whether by words or by conduct, by false or misleading allegations, or by concealment of that which should have been disclosed, which deceives and is intended to deceive another so that he shall act upon it to his

legal injury. In Concise Oxford Dictionary, it has been defined as criminal deception, use of false representation to gain unjust advantage; dishonest artifice or trick. According to Halsbury's Laws of England, a representation is deemed to have been false, and therefore a misrepresentation, if it was at the material date false in substance and in fact. Section 17 of the Contract Act defines fraud as act committed by a party to a contract with intent to deceive another. From dictionary meaning or even otherwise fraud arises out of deliberate active role of representator about a fact which he knows to be untrue yet he succeeds in misleading the representee by making him believe it to be true. The representation to become fraudulent must be of fact with knowledge that it was false. In a leading English case Derry v. Peek what constitutes fraud was described thus: (All ER p. 22 B-C)

Fraud is proved when it is shown that a false representation has been made (i) knowingly, or (ii) without belief in its truth, or (iii) recklessly, careless whether it be true or false.

34. This aspect of the matter has been considered recently by this Court in Roshan Deen v. Preeti Lal; Ram Preeti Yadav v. U.P. Board of High School and Intermediate Education Ram Chandra Singh case and Ashok Leyland Ltd. v. State of T.N.

35. Suppression of a material document would also amount to a fraud on the court. (See Gowrishankar v. Joshi Amba Shankar Family Trust and S.P. Chengalvaraya Naidu case.)

36. "Fraud" is a conduct either by letter or words, which induces the Ors. person or authority to take a definite determinative stand as a response to the conduct of the former either by words or letter. Although negligence is not fraud but it can be evidence on fraud; as observed in Ram Preeti Yadav case.

37. In Lazarus Estates Ltd. v. Beasley Lord Denning observed at QB pp. 712 and 713: (All ER p. 345 C)

No judgment of a court, no order of a minister, can be allowed to stand if it has been obtained by fraud. Fraud unravels everything.

In the same judgment Lord Parker, L.J. observed that fraud vitiates all transactions known to the law of however high a degree of solemnity (p. 722).

(Emphasis made by this Court)

In State of Punjab and Another Vs. Gurdial Singh and Others, , the apex Court held as under:

9. The question, then, is what is mala fides in the jurisprudence of power? Legal malice is gibberish unless juristic clarity keeps it separate from the popular concept of personal vice. Pithily put, bad faith which invalidates the exercise of power - sometimes called colourable exercise or fraud on power and oftentimes overlaps motives, passions and satisfactions - is the attainment of ends beyond

the sanctioned purposes of power by simulation or pretension of gaining a legitimate goal. If the use of the power is for the fulfilment of a legitimate object the actuation or catalysation by malice is not legicidal. The action is bad where the true object is to reach an end different from the one for which the power is entrusted, goaded by extraneous considerations, good or bad, but irrelevant to the entrustment. When the custodian of power is influenced in its exercise by considerations outside those for promotion of which the power is vested the court calls it a colourable exercise and is undeceived by illusion. In a broad, blurred sense, Benjamin Disraeli was not off the mark even in law when he stated: I repeat ... that all power is a trust - that we are accountable for its exercise - that, from the people, and for the people, all springs, and all must exist". Fraud on power voids the order if it is not exercised bona fide for the end designed. Fraud in this context is not equal to moral turpitude and embraces all cases in which the action impugned is to effect some object which is beyond the purpose and intent of the power, whether this be malice-laden or even benign. If the purpose is corrupt the resultant act is bad. If considerations, foreign to the scope of the power or extraneous to the statute, enter the verdict or impel the action, mala fides or fraud on power vitiates the acquisition or Ors. official act.

(Emphasis added)

Therefore, the action of the State Government in issuing the impugned notifications is void ab initio in law on account of fraud played upon the State Government by the beneficiary company by misrepresenting the facts and made it to believe and act upon the same to exercise its powers to acquire the vast tract of lands in its favour for which they are not legally entitled to and therefore the action of the State Government in exercising its power for the purpose Ors. than vested in it, amounts to legal mala fides as held by the Apex Court in the cases referred to supra.

53. Further as could be seen from the original records of the State Government that issuance of the preliminary notifications and obtaining agreements from the Vedanta Foundation and the beneficiary company are also bad in law for the reason that we have answered point No. 1 holding that the beneficiary company is not a public company; it is a private company limited by guarantee. Further acquisition of lands in its favour is permissible only in respect of the purpose of erection of dwelling houses for workmen employed by the company or for the provision of amenities directly connected therewith.

The MOU dated 19.7.2006 executed by Vedanta Company in favour of the State Government was before publishing the preliminary notifications in respect of the acquired lands. On the basis of the said MOU preliminary notifications dated 13.12.2006 to 22.12.2006 were published. Therefore, the said agreement was not executed by the beneficiary company in favour of the State Government for publishing Section 4(1) notifications by giving previous consent by it as provided u/s 39 of the L.A. Act to put the provisions of Sections 4 to 16 (both inclusive) and Sections 18 to 37 in force. Therefore, there is no valid agreement before the

State Government to exercise the statutory power and grant previous consent for publishing the preliminary notifications. For this reason, publication of the preliminary notifications on the basis of the said MOU executed by Vedanta Company does not enure to the benefit of the beneficiary company. Therefore, the said agreement is not valid as required u/s 39 read with Section 41 of the L.A. Act and, therefore, acquisition of lands by publishing Section 4 (1) notifications in favour of the beneficiary company is vitiated in law for the reason that before putting the provisions of Sections 4 to 16 and 18 to 37 in order to acquire land in favour of the beneficiary company, no previous consent of the State Government was there and such consent also shall not be given unless the company has executed the agreement in terms of Section 41 of the L.A. Act. Therefore, the agreement is not only not in conformity with Sub-sections (1) to (4) and (4A) of Section 41, but the same is not legal and valid for the reason that much prior to the said agreement, preliminary notifications were published and thereafter final notifications were published which are not permissible in law. Therefore, the same is in contravention of Section 39 of the Act.

54. For the above reason also the final notifications are bad in law. In view of the reasons stated supra, the submissions of Shri Ashok Mohanty, learned Advocate General and Mr. Anil Diwan, learned Senior Counsel and Mr. Sanjit Mohanty, learned Senior Counsel for the Company with reference to the original records of the State Government produced by the learned Government Advocate to justify the action of the State Government in support of the impugned notifications regarding the previous consent accorded by the State Government and thereafter Memorandum of Understanding executed by the company in favour of the State Government agreeing to certain terms and conditions as provided in Section 41 of the L.A. Act and thereafter on the basis of the report of the Collector, the State Government satisfied with the requisition made by the company that the proposed lands in the preliminary notification are required for it for educational purpose to establish a multiple discipline university in the acquired lands, which will benefit the students of Orissa State and also the Ors. States in the country, which will be more advantageous for the State Government, therefore, there is a public purpose as defined u/s 3(f) (vi) of the Act, is wholly untenable in law and the reliance placed on the various decisions by them which are adverted to in the judgment portion, are not of much help to them. For the reasons stated supra, all the points from 3 to 11 are answered against the Beneficiary Company and the State Government.

Answer to Point Nos. 12(a) and (b) and 13:

55. Learned Senior Counsel Mr. Jayant Das and Mr. Rajat Rath, on behalf of the petitioners submit that the acquisition of the lands in question in favour of the beneficiary company, is bad in law in view of the fact that by Gazette Notification dated 23.4.1984 published by the State Government, the nearby area of the acquired lands has been declared as Wildlife Sanctuary and that two rivers, namely, "Nuanai" & "Nala" are flowing in the acquired lands according to the

satellite map issued by the Forest Department. With reference to the said map it is submitted by the learned Senior Counsel for the petitioners that if the impugned notifications for acquisition of lands in favour of the beneficiary company are not quashed, it would definitely affect the ecology and environment in the locality and public in general would be affected. The action of the State Government in acquiring lands is not only in contravention of the provisions of the Wild Life (Protection) Act but also Air (Prevention & Control of Pollution) Act as well as Water (Prevention & Control of Pollution) Act and Environmental Protection Act of 1986. The wild animals in the Sanctuary will adversely suffer and so also Water and Air pollution will be caused in that locality. On account of establishment of educational institutions, township and Ors. buildings as proposed by the beneficiary company in the acquired lands would come up which would affect the two rivers that are flowing on the lands in question. The same is against the doctrine of "public trust" as held by the Apex Court in the case of Common Cause, A Registered Society Vs. Union of India and Others, .

56. Mr. Jayant Das, learned Senior Counsel, rightly placed reliance upon the decision of the Apex Court in Bandhua Mukti Morcha Vs. Union of India (UOI) and Others, , which decision states that affecting the statutory and fundamental rights of the citizens would be a continuing wrong. In the name of sustainable development, acquiring vast tract of lands of the locality by the State Government would certainly affect the inter-generational equity for the people of the locality. The conversion of nature of the lands in question from agricultural to non-agricultural purpose would affect the environment and ecology at large and it would be certainly in the contravention of the aforesaid Statutory laws and violations of the fundamental duties as enumerated in Article 51A(1)(g) of Part IV of the Constitution. Further the condition imposed by the State Government that within 5 kilometers of the acquired lands no person shall be allowed to develop his properties by putting up the buildings without permission of the Development Authority also is in violation of their rights. Therefore, the public interest petitions must succeed as the impugned action of the State Government certainly not only amounts to violation of Rule of law but also affect public interest and thereby it would adversely affect the constitutional, fundamental and statutory rights of the residents of the locality. Therefore, the Public Interest Litigation writ petitions are maintainable in law for the reason that the public interest also involved in these petitions and hence the same are required to be allowed.

57. In support of their contentions, the learned Senior Counsel on behalf of the petitioners have placed strong reliance upon the decision of the Constitution Bench of the Supreme Court in the case of S.P. Gupta Vs. President of India and Others, ; and decisions of the Supreme Court in Janata Dal Vs. H.S. Chowdhary and Others, ; Indian Council for Environment-Legal Action Vs. Union of India (UOI) and Others, ; and State of Uttaranchal Vs. Balwant Singh Chaufal and Others, and requested this Court to allow the Public Interest Litigation petitions granting the reliefs.

58. The submissions was strongly refuted by the learned Advocate General and also the learned senior counsel for the beneficiary Company contending that there is neither ecology & environmental issues involved in these petitions nor is there any contravention of the laws in relation to Air, Water or Wildlife Protection or Environmental Protection Act. It is contended by learned Senior Counsel Mr. Sanjit Mohanty that the petitioners by filing the public interest litigation petitions, have abused the process of this Court, which are not at all maintainable in law in view of the fact that earlier one writ petition being W.P.(C) No. 6981 of 2008, which was filed by nine persons was disposed of by this Court vide its order dated 9.5 2008 holding that it is not maintainable in law. This aspect of the case is elaborately referred to at para-9 in the counter statement filed by the beneficiary Company at page 270. It is also submitted by the learned Advocate General that the legal contentions urged on behalf of the petitioners that ecology and environment of the area in question will be adversely affected is contrary to the report of the Additional Secretary to the State Government, Tourism Department produced in the W.P.(C) No. 7163 of 2008. Further the learned Advocate General and the learned Senior Counsel on behalf of the beneficiary Company have urged that there is neither any wildlife sanctuary nor any forest is existing near the lands in question as contended by the learned Senior Counsel and another counsel on behalf of the petitioners, which are acquired in favour of the company and the said statement of the petitioners is a false statement of fact and in fact the lands which are existing for sanctuary is excluded from acquisition in the final notifications. Therefore, it is contended by them that there is neither public interest involved in these matters nor Rule of law is violated by the State Government for which they have requested for dismissal of the public interest writ petitions.

59. With reference to the aforesaid rival legal contentions, we have very carefully examined the above P.I.L. writ petitions with reference to the pleadings, rival legal contentions urged by the learned Senior Counsel and another counsel for the parties and records/files of the Government and after careful examination of all the documents produced by the parties, we are answering the above points in favour of the petitioners by assigning the following reasons.

60. The lands of the locality are acquired by the State Government in favour of the beneficiary company. The State Government by Notification dated 23.4.1984 published in the Gazette declared certain lands situated near the vicinity of the acquired lands as the Wildlife Sanctuary is an undisputed fact and the said notification is still in force. Further the satellite maps issued by the Department of Forest produced by the petitioners in the public interest litigation petitions, would clearly go to show that two rivers, namely, "Nuanai" and "Nala" are flowing in certain lands acquired in favour of the beneficiary-company. Hence, the control of the said rivers will be under the said private company if the acquisition proceedings are held to be valid in law thereby the doctrine of public trust as held by the Hon"ble Supreme Court in the case of Common Cause, A Registered Society (supra) upon which strong reliance has been placed by the

petitioners Senior Counsel, will be violated. In this decision the Supreme Court held that natural resources such as air, water, forest, lakes, rivers and wildlife are public properties entrusted to the Government for their safe and proper use and proper protection and the doctrine enjoins upon the Government to protect the resources for the enjoyment of the general public rather than to permit their use for private ownership or commercial purposes. Let us know what the apex Court said on the point:

160. The Court also appears to have invoked the "Doctrine of Public Trust" which is a doctrine of environmental law under which the natural resources such as air, water, forest, lakes, rivers and wildlife are public properties "entrusted" to the Government for their safe and proper use and proper protection. Public Trust Law recognizes that some types of natural resources are held in trust by the Government for the benefit of the public. The "Doctrine of Public Trust" has been evolved so as to prevent unfair dealing with or dissipation of all natural resources. This doctrine is an ancient and somewhat obscure creation of Roman and British law which has been discovered recently by environmental lawyers in search of theory broadly applicable to environmental litigation.

161. This doctrine was considered by this Court in its judgment in M.C. Mehta Vs. Kamal Nath and Others, to which one of us (S. Saghir Ahmad,J.) was a party. Justice Kuldeep Singh, who authored the erudite judgment and has also otherwise contributed immensely to the development of environmental law, relying upon ancient Roman "Doctrine of Public Trust" as also the work of Joseph L. Sax, Professor of Law, University of Michigan and Ors. foreign decisions, wrote out that all natural resources are held in "trust" by the Government. The doctrine enjoins upon the Government to protect the resources for the enjoyment of the general public rather than to permit their use for private ownership or commercial purposes....

Further, by acquiring the vast tract of lands in which the above two rivers are flowing and handing over the same to the beneficiary company, as alleged by the opposite parties without producing any document is definitely contrary to the doctrine of public trust. Requiring the beneficiary-company to maintain the flow of the above two rivers would also affect the residents of the locality at large. The aforesaid action of the State also will be in contravention of the provisions of Air and Water (Prevention & Control of Pollution) Act and Environmental Protection Act of 1986. Large scale construction for the establishment of the proposed university will also adversely affect the Wildlife Sanctuary, entire Eco system and the ecological environment in the locality.

61. In M.C. Mehta Vs. Union of India (UOI) and Others, , the Supreme Court held as under:

46... The most vital necessities, namely, air, water and soil, having regard to right to life under Article 21 cannot be permitted to be misused and polluted so as to reduce the quality of life of others. Having regard to the right of the

community at large it is permissible to encourage the participation of amicus curiae, the appointment of experts and the appointments of Monitory Committees. The approach of the Court has to be liberal towards ensuring social justice and protection of human rights. In *M.C. Mehta v. Union of India* this Court held that life, public health and ecology has priority over unemployment and loss of revenue. The definition of "sustainable development" which Brundtland gave more than 3 decades back still holds good. The phrase covers the development that meets the needs of the present without compromising the ability of the future generation to meet their own needs. In *Narmada Bachao Andolan v. Union of India* this Court observed that sustainable development means the type or extent of development that can take place and which can be sustained by nature/ecology with or without mitigation. In these matters, the required standard now is that the risk of harm to the environment or to human health is to be decided in public interest, according to a "reasonable persons" test. (See *Chairman Barton: The Status of the Precautionary Principle in Australia* (Vol. 22, 1998, Harv. Envtt. Law Review, p. 509 at p. 549-A) as referred to in para 28 in *A.P. Pollution Control Board v. Prof. M.V. Nayudu*).

In *T.N. Godavarman Thirumulpad Vs. Union of India (UOI) and Others*, , the Supreme Court has held as under:

48...We may only note that the basis of these valuations is the theory of sustainable development i.e. development that meets the needs of the present without compromising with the ability of future generations to meet their own needs. Despite various elaborations, definition of sustainable development, though very old, still is widely accepted the world over and has been reiterated by this Court in a catena of cases.

61. The background under which the fund came to be created has already been noted. Noticing fast depletion of forests, the fund was ordered to be utilised for protection of forests and environments. The environments are not the State property and are a national asset. It is the obligation of all to conserve the environments, and for its utilisation, it is necessary to have regard to the principles of sustainable development and intergenerational equity.

94. The submission made on behalf of the Federation of Indian Mineral Industries about calculation of NPV at the rate of 10 per cent for major mineral and 5 per cent for minor mineral as already noted cannot be accepted. The question is not of the value of the mineral or it being high value and low volume and mineral of high volume and low value, the question is about use of the forest areas and need to protect the environments in the manner abovestated. A larger public interest has to be the guiding principle and not the present interest of user agency only.

(Emphasis added)

Further in *T.N. Godavaraman Thirumulpad Vs. Union of India (UOI) and Others*, , the Supreme Court observed that:

3. As a matter of preface, we may state that adherence to the principle of sustainable development is now a constitutional requirement. How much damage to the environment and ecology has got to be decided on the facts of each case. While applying the principle of sustainable development one must bear in mind that development which meets the needs of the present without compromising the ability of the future generations to meet their own needs is sustainable development. Therefore, courts are required to balance development needs with the protection of the environment and ecology. It is the duty of the State under our Constitution to devise and implement a coherent and coordinated programme to meet its obligation of sustainable development based on inter-generational equity (see *A.P. Pollution Control Board v. Prof. M.V. Nayudu*). Mining is an important revenue-generating industry. However, we cannot allow our national assets to be placed into the hands of companies without a proper mechanism in place and without ascertaining the credibility of the user agency.

62. In this view of the matter, there is violation of the provisions of the above statutory enactments. Further as could be seen from the original file produced by the learned Government Advocate in these cases, vast tract of lands belonging to the State Government including Gochar lands on the basis requisition of Vedanta Company have been de-reserved and divested from the purpose for which it was reserved and made available for grant in favour of the beneficiary company by way of lease. In the instant case, as could be seen from the proceedings maintained by the Collector, hundreds of acres of lands of the Government has been granted in favour of the company which grant is under Rule 5 as mentioned in the records is not permissible in law for the reason that Rule 5 of the Orissa Government Land Settlement Rules, 1983 provides that all applications for settlement of Government land in favour of the applicants irrespective of the purpose of lease or extent of area involved either in rural or in urban area shall be filed before the Tahasildar having jurisdiction over the area in which the land is situated and the application for settlement of land shall be filed by the applicant in Form I. On receipt of such application, the same shall be forthwith entered chronologically in a register maintained in Form II and after receipt of the applications the Tahasildar shall cause a verification to be made in respect of each application with reference to the existing record of rights and map to ascertain whether the land applied for is free from encroachment of encumbrance or not, whether lease can be granted has to be examined and whether the applicant is eligible to get the land for the purpose for which he has applied. Before grant of such land, proclamation in Form No. III shall be published inviting objections, fixing a date for hearing. Further notice in this regard must be affixed in the notice Board of the Tahasildar and a copy of the same shall also be sent to the Gram Panchayat or Notified Area Council or Municipality, as the case may be, under which the land is situated. As could be seen from the records, no such procedure appears to have been followed and the grant of lease of hundreds of acres of government land in favour of the beneficiary company has been made without following the procedure

contemplated in the Business Transaction Rules framed by his Excellency the Governor in exercise of power under Article 166(3) of the Constitution. The valuation of the property and the rent fixed has also been done without following the proper procedure and grant of such vast extent of land in favour of the company is not provided for under Rule 5 of the Rules. Therefore, grant of such land in its favour for establishment of a non-existing university is once again conferring largess upon a private company thereby public interest is affected is also one more strong reason for allowing the public interest litigation petitions.

63. For the reasons stated supra, definitely the public interest is involved in these writ petitions filed by the public spirited persons. It is profitable to know what the apex Court ruled on the point.

In People's Union for Democratic Rights and Others Vs. Union of India (UOI) and Others, , the Supreme Court held as under:

2... We wish to point out with all the emphasis at our command that public interest litigation which is a strategic arm of the legal aid movement and which is intended to bring justice within the reach of the poor masses, who constitute the low visibility area of humanity, is a totally different kind of litigation from the ordinary traditional litigation which is essentially of an adversary character where there is a dispute between two litigating parties, one making claim or seeking relief against the Ors. and that other opposing such claim or resisting such relief. Public interest litigation is brought before the court not for the purpose of enforcing the right of one individual against another as happens in the case of ordinary litigation, but it is intended to promote and vindicate public interest which demands that violations of constitutional or legal rights of large numbers of people who are poor, ignorant or in a socially or economically disadvantaged position should not go unnoticed and un-redressed. That would be destructive of the rule of law which forms one of the essential elements of public interest in any democratic form of Government. The rule of law does not mean that the protection of the law must be available only to a fortunate few or that the law should be allowed to be prostituted by the vested interests for protecting and upholding the status quo under the guise of enforcement of their civil and political rights. The poor too have civil and political rights and the rule of law is meant for them also, though today it exists only on paper and not in reality. If the sugar barons and the alcohol kings have the fundamental right to carry on their business and to fatten their purses by exploiting the consuming public, have the chamars belonging to the lowest strata of society no fundamental right to earn an honest living through their sweat and toil? The former can approach the courts with a formidable army of distinguished lawyers paid in four or five figures per day and if their right to exploit is upheld against the Government under the label of fundamental right, the courts are praised for their boldness and courage and their independence and fearlessness are applauded and acclaimed. But, if the fundamental right of the poor and helpless victims of injustice is sought to be enforced by public interest litigation, the so-called champions of human rights

frown upon it as waste of time of the highest court in the land, which, according to them, should not engage itself in such small and trifling matters. Moreover, these self-styled human rights activists forget that civil and political rights, priceless and invaluable as they are for freedom and democracy, simply do not exist for the vast masses of our people. Large numbers of men, women and children who constitute the bulk of our population are today living a sub-human existence in conditions of abject poverty; utter grinding poverty has broken their back and sapped their moral fibre. They have no faith in the existing social and economic system. What civil and political rights are these poor and deprived sections of humanity going to enforce? This was brought out forcibly by W. Paul Gormseley at the silver jubilee celebrations of the Universal Declaration of Human Rights at the Banaras Hindu University:

Since India is one of those countries which has given a pride of place to the basic human rights and freedoms in its Constitution in its Chapter on Fundamental Rights and on the Directive Principles of State Policy and has already completed twenty-five years of independence, the question may be raised whether or not the fundamental rights enshrined in our Constitution have any meaning to the millions of our people to whom food, drinking water, timely medical facilities and relief from disease and disaster, education and job opportunities still remain unavoidable. We, in India, should on this occasion study the human rights declared and defined by the United Nations and compare them with the rights available in practice and secured by the law of our country.

The only solution for making civil and political rights meaningful to these large sections of society would be to remake the material conditions and restructure the social and economic order so that they may be able to realise the economic, social and cultural rights. There is indeed close relationship between civil and political rights on the one hand and economic, social and cultural rights on the other and this relationship is so obvious that the International Human Rights Conference in Teheran called by the General Assembly in 1968 declared in a final proclamation:

Since human rights and fundamental freedoms are indivisible, the full realisation of civil and political rights without the enjoyment of economic, social and cultural rights is impossible.

Of course, the task of restructuring the social and economic order so that the social and economic rights become a meaningful reality for the poor and lowly sections of the community is one which legitimately belongs to the legislature and the executive, but mere initiation of social and economic rescue programmes by the executive and the legislature would not be enough and it is only through multi-dimensional strategies including public interest litigation that these social and economic rescue programmes can be made effective. Public interest litigation, as we conceive it, is essentially a cooperative or collaborative effort on the part of the petitioner, the State or public authority and the court to secure observance of the constitutional or legal rights, benefits and privileges conferred

upon the vulnerable sections of the community and to reach social justice to them. The State or public authority against whom public interest litigation is brought should be as much interested in ensuring basic human rights, constitutional as well as legal, to those who are in a socially and economically disadvantaged position, as the petitioner who brings the public interest litigation before the court. The State or public authority which is arrayed as a respondent in public interest litigation should, in fact, welcome it, as it would give it an opportunity to right a wrong or to redress an injustice done to the poor and weaker sections of the community whose welfare is and must be the prime concern of the State or the public authority.

In *S.P. Gupta Vs. President of India and Others*, , the apex Court held as under:

We would therefore hold that any member of the public having sufficient interest can maintain an action for judicial redress for public injury arising from breach of public duty or from violation of some provision of the Constitution or the law and seek enforcement of such public duty and observance of such constitutional or legal provision. This is absolutely essential for maintaining the rule of law, furthering the cause of justice and accelerating the pace of realization of the constitutional objective : "Law, as pointed out by Justice Krishna Iyer in *Fertilizer Corporation Kamgar Union v. Union of India*, AIR 1981 SC 344," is a social auditor and this audit function can be put into action when some one with real public interest ignites the jurisdiction....Another point which requires emphasis is that cases may arise where there is undoubtedly public injury by the act or omission of the State or public authority but such act or omission also causes a specific legal injury to an individual or to a specific class or group of individuals. In such cases, a member of the public having sufficient interest can certainly maintain an action challenging the legality of such act or omission.

In the case of *Janata Dal Vs. H.S. Chowdhary and Others*, , the Supreme Court taking note of the observations made in the case of *S.P. Gupta* (supra) and number of its earlier decisions, held as under:

It is thus clear that only a person acting bona fide and having sufficient interest in the proceeding of PIL will alone have a locus standi and can approach the court to wipe out the tears of the poor and needy, suffering from violation of their fundamental rights, but not a person for personal gain or private profit or political motive or any oblique consideration. Similarly, a vexatious petition under the colour of PIL brought before the court for vindicating any personal grievance, deserves rejection at the threshold.

It is depressing to note that on account of such trumpery proceedings initiated before the courts, innumerable days are wasted which time otherwise could have been spent for the disposal of cases of the genuine litigants. Though we are second to none in fostering and developing the newly invented concept of PIL and extending our long arm of sympathy to the poor, the ignorant, the oppressed and the needy whose fundamental rights are infringed and violated and whose

grievances go unnoticed, unrepresented and unheard; yet we cannot avoid but express our opinion that while genuine litigants with legitimate grievances relating to civil matters involving properties worth hundreds of millions of rupees and criminal cases in which persons sentenced to death facing gallows under untold agony and persons sentenced to life imprisonment and kept in incarceration for long years, persons suffering from the undue delay in service matters, Government or private persons awaiting the disposal of tax cases wherein huge amounts of public revenue or unauthorised collection of tax amounts are locked up, detenus expecting their release from the detention orders etc. etc. are all standing in a long serpentine queue for years with the fond hope of getting into the courts and having their grievances redressed, the busybodies, meddlesome interlopers, wayfarers or officious interveners having absolutely no public interest except for personal gain or private profit either for themselves or as proxy of others or for any Ors. extraneous motivation or for glare of publicity break the queue muffling their faces by wearing the mask of public interest litigation, and get into the courts by filing vexatious and frivolous petitions and thus criminally waste the valuable time of the courts and as a result of which the queue standing outside the doors of the Court never moves which piquant situation creates a frustration in the minds of the genuine litigants and resultantly they lose faith in the administration of our judicial system.

(Emphasis added)

Further in a recent decision, in the case of State of Uttaranchal Vs. Balwant Singh Chaufal and Others, , the Supreme Court referring to large number of its earlier decisions held as under:

33. The High Courts followed this Court and exercised similar jurisdiction under Article 226 of the Constitution. The Courts expanded the meaning of right to life and liberty guaranteed under Article 21 of the Constitution. The rule of locus standi was diluted and the traditional meaning of "aggrieved person" was broadened to provide access to justice to a very large section of the society which was otherwise not getting any benefit from the judicial system. We would like to term this as the first phase or the golden era of the public interest litigation. We would briefly deal with important cases decided by this Court in the first phase after broadening the definition of "aggrieved person".

36. Public interest litigation is not in the nature of adversarial litigation but it is a challenge and an opportunity to the Government and its officers to make basic human rights meaningful to the deprived and vulnerable sections of the community and to assure them social and economic justice which is the signature tune of our Constitution. The Government and its officers must welcome public interest litigation because it would provide them an occasion to examine whether the poor and the downtrodden are getting their social and economic entitlements or whether they are continuing to remain victims of deception and exploitation at the hands of strong and powerful sections of the community and whether social and economic justice has become a meaningful

reality for them or it has remained merely a teasing illusion and a promise of unreality, so that in case the complaint in the public interest litigation is found to be true, they can in discharge of their constitutional obligation root out exploitation and injustice and ensure to the weaker sections their rights and entitlements.

39. The origin and evolution of public interest litigation in India emanated from realisation of constitutional obligation by the Judiciary towards the vast sections of the society-the poor and the marginalised sections of the society. This jurisdiction has been created and carved out by the judicial creativity and craftsmanship.

40. In *M.C. Mehta v. Union of India*, this Court observed that Article 32 does not merely confer power on this Court to issue direction, order or writ for the enforcement of fundamental rights. Instead, it also lays a constitutional obligation on this Court to protect the fundamental rights of the people. The Court asserted that, in realisation of this constitutional obligation, "it has all incidental and ancillary powers including the power to forge new remedies and fashion new strategies designed to enforce the fundamental rights". The Court realised that because of extreme poverty, a large number of sections of society cannot approach the court. The fundamental rights have no meaning for them and in order to preserve and protect the fundamental rights of the marginalised sections of the society by judicial innovation; the Courts by judicial innovation and creativity started giving necessary directions and passing orders in the public interest.

41. The development of public interest litigation has been an extremely significant development in the history of the Indian jurisprudence. The decisions of the Supreme Court in the 1970s loosened the strict locus standi requirements to permit filing of petitions on behalf of marginalised and deprived sections of the society by public spirited individuals, institutions and/or bodies. The higher courts exercised wide powers given to them under Articles 32 and 226 of the Constitution. The sort of remedies sought from the Courts in the public interest litigation goes beyond award of remedies to the affected individuals and groups. In suitable cases, the Courts have also given guidelines and directions. The Courts have monitored implementation of legislation and even formulated guidelines in the absence of legislation. If the cases of the decades of 70s and 80s are analysed, most of the public interest litigation cases which were entertained by the courts are pertaining to enforcement of fundamental rights of marginalised and deprived sections of the society.

64. In view of the clear pronouncement of law in the aforesaid cases by the Apex Court this Court has to interfere with the acquisition proceedings and grant of Government lands in favour of the Beneficiary Company to protect the public interest. Hence we have to answer the aforesaid points in favour of the petitioners and against the opposite parties.

65. For the reasons stated supra, the factual contentions urged by the learned Advocate General, placing reliance upon the report of the Additional Secretary of Tourism Department, is wholly contrary to the Gazette Notification of 1984 referred to supra and the Satellite Map issued by the Forest Department to the petitioners, which is produced for our perusal. Further the legal contentions urged on behalf of the Company by Mr. Sanjit Mohanty, learned Senior Counsel that the petitioners have abused the process of this Court claiming that they are public spirited persons, is also untenable in law for the reason that they have established the case that interest of the public of the locality will be affected and also there will be violation of the Rule of law if the acquisition of lands and grant of leasehold rights in respect of Government lands in favour of the beneficiary Company is held to be not legal and valid and therefore we have to hold that there is no abuse of the process of this Court by the petitioners in approaching this Court espousing the public cause and public interest as the act of the State Government is in contravention of the Notification issued by the State Government way back in the year 1984 declaring certain lands nearby the lands acquired, as Wild life Sanctuary and the documents produced by the petitioners to prove the fact that two rivers are flowing on the acquired lands. For the reasons stated supra we are of the view that the petitioners in the PIL writ petitions have established that they are bona fide public spirited persons who are very much interested in protecting the public interest and see that the State Government discharged its responsibilities and fundamental duties towards the public of the locality keeping in view "the doctrine of public trust" upon the public properties. The disposal of the earlier writ petition filed by nine persons referred to supra upon which reliance is placed by the learned Senior Counsel on behalf of the Company in support of his contention that the writ petitioners in the PIL have abused the process of this Court is not tenable in law, as this Court has not decided the case on merits by answering the substantial issues that arose for its consideration. In the present writ petitions by urging tenable grounds they have made out a strong case for granting the reliefs. If the PIL petitions are not allowed there will be a continuing wrong of the State Government and the beneficiary Company, which would violate the human rights of the residents of the locality where the lands are acquired and land owners/interested persons. They are small holders of the lands who belong to the Marginalized sections of the society and therefore they have no access to the justice for which they have got constitutional right under Article 39A of the Constitution and hundreds acres of Government lands are granted in favour of the company in utter violation of law.

66. For the foregoing reasons, absolutely there is no substance in the contentions urged by the learned Senior counsel on behalf of the Company that there is no public interest involved in these cases of PIL writ petitions filed by the petitioners and they have abused the process of the Court is misconceived and wholly untenable in law and the said contention is required to be rejected and the public interest litigation writ petitions also have to be allowed.

Answer to Point Nos. 14 and 15:

67. We have answered all the points framed in these petitions against the State Government and the beneficiary Company by recording our reasons and we have held that the acquisition proceedings from the stage of initiation till the date of purported awards which in fact and law not awarded and the alleged taking over of possession of the lands is in flagrant violation of the statutory provisions of Sections 4, 5A, 6, 9, 10, 11, 12 (2), 23, 24, read with the provisions under Part-VII of the Land Acquisition Act, 1894. We have also answered the points that arose for our consideration in the Public Interest Litigation holding that the initiation of the acquisition proceedings in favour of the beneficiary company, on the requisition made by the Vedanta Foundation by misrepresenting facts and playing fraud on the State Government, has vitiated the entire acquisition proceedings. We have further answered that the public interest at large is affected and there is violation of rule of law. Therefore, we have also held that writ petitions filed by the petitioners as public interest litigation are also required to be allowed and made observation that the petitioners in those petitions, apart from public interest, they have pleaded on behalf of small land holders who have no sustenance to approach this Court to fight litigation. Therefore, the acquisition proceedings in its entirety in respect of persons who have approached this Court and even who have not approached this Court are liable to be quashed for the reason that there is flagrant violation of the aforesaid provisions of the Land Acquisition Act as observed by the Supreme Court in the case of H.M.T. House Building Co-operative Society Vs. Syed Khader and others, . The Supreme Court, while answering the legal questions that arose for consideration, held that prior approval of the Government is required u/s 44-A, but as the same has not been followed, the entire acquisition proceedings was quashed. Further, the Supreme Court directed in the above referred case the State Government and the Society which was in the possession, that lands shall be restored to the respective land owners irrespective of the fact whether they had challenged the acquisition of their lands or not and at paragraph 26 of its judgment has directed as hereunder:

26. We direct that as a result of quashing of the land acquisition proceedings including the notifications as aforesaid, the possession of the lands shall be restored to the respective landowners irrespective of the fact whether they had challenged the acquisition of their lands or not. On restoration of the possession to the landowners they shall refund the amounts received by them as compensation or otherwise in respect of their lands. The appellant, the respondents and the State Government including all authorities/persons concerned shall implement the aforesaid directions at an early date.

68. Applying the said decision to the facts of the case and the acquisition of lands in question, we deem it appropriate to grant reliefs in favour of the land owners irrespective of whether they have approached this Court or not.

69. In the result, we allow the writ petitions, quash the impugned land acquisition proceedings including the notifications under Sections 4 (1) and 6 and

the awards passed in the Land Acquisition Proceedings for acquisition of land in favour of the beneficiary company and direct that the possession of the acquired lands shall be restored to the respective land owners irrespective of the fact whether they have challenged the acquisition of their lands or not. On restoration of the possession to the land owners, they shall refund the amount received by them as compensation or otherwise in respect of their lands. We also quash the grant of Government Lands in favour of the Beneficiary Company under Rule 5 of the Government Land Settlement Rules with a direction to the State Government to resume the lands which were granted to the beneficiary company by way of lease. All concerned including the State Government, the land owners and the beneficiary company shall implement the aforesaid direction at an early date.

There would be no order as to costs.

B.P. Das, J.

I agree.