

(2019) 01 OHC CK 0006

In the Orissa High Court

Case No : Writ Petition (Civil) No. 9403 Of 2014 & Writ petition (C) No. 9403 Of 2014

Sudarshan Naik And Others

APPELLANT

Vs

State Of Odisha And Others

RESPONDENT

Date of Decision : 11-01-2019

Acts Referred:

Land Acquisition Act, 1894 — Section 3(f)(iv), 4, 4(1), 5A, 5A(2), 6, 6(1), 6(2)
Constitution Of India, 1950 — Article 12, 14, 21, 32, 226, 300A

Citation : (2019) 01 OHC CK 0006

Hon'ble Judges : Sanju Panda, J;S.K. Sahoo, J

Bench : Division Bench

Advocate : A.K. Nanda G.N. Sahu, Kishore Kumar Mishra, Jaganath Patnaik, Rajat Kumar Rath

Final Decision : Dismissed

Judgement

S.k. Sahoo, J

The petitioners who are thirty five in numbers and belonged to villages Kurebaga and Siriapali situated in the district of Jharsuguda, have filed this writ application challenging the publication of preliminary notification under section 4(1) of the Land Acquisition Act, 1894 (hereafter '1894 Act') dated 04.07.2007 under Annexure-1 issued by the Joint Secretary, Revenue and Disaster Management Department, Government of Odisha, Bhubaneswar relating to purported acquisition of about Ac. 200.93 dec. land in Mouza Siriapali for public purpose in connection with establishment of industry by IDCO. They have further challenged the declaration made under section 6(1) of 1894 Act dated 14.08.2008 under Annexure-3 that such land in Mouza Siriapali is required for public purpose relating to establishment of industry by IDCO with a further prayer to quash the land acquisition proceeding i.e. L.A. Case No. 07 of 2006 pending before the Special Land Acquisition Officer, Jharsuguda (opposite party no. 3).

1. It is the case of the petitioners that they are farmers and primarily depend on

agriculture for their livelihood. The Govt. of Odisha issued a notification (Annexure-1) under section 4(1) of the 1894 Act to acquire an area of Ac. 200.93 dec. land in Mouza Siriapali for construction of an Aluminum Smelter and a Captive Power Plant by the opposite party no. 5 Vedanta Aluminium Limited. Such notification dated 04.07.2007 was brought to the public notice in the village by affixing notices in the public place and also by beating of drums on dated 10.08.2007 but there was no newspaper publication in the petitioners' village/ locality in respect of such notification. It is the further case of the petitioners that since there was strong rumor about such land acquisition, the petitioners and similarly affected farmers enquired about the fact and submitted a representation on 05.09.2007 under Annexure-2 before the opp. party no. 2, the Collector, Jharsuguda narrating their grievances and requesting him to exclude their lands from such acquisition proceeding. The opp. parties nos. 2 and 3 did not take into consideration the grievances of the petitioners nor afforded any opportunity of hearing in spite of mandate of law under section 5-A(2) of the 1894 Act.

2. It is the further case of the petitioners that in view of the proviso (ii) to section 6(1) of the 1894 Act, no declaration in respect of any particular land covered by a notification under section 4(1) shall be made after the expiry of one year from the date of the publication of such notification. Since section 4(1) notification was made on dated 04.07.2007 and the same was published in the locality of the petitioners by affixing a copy of the same in a conspicuous place in the village along with beating of drum on 10.08.2007 as reveals under Annexure-1 and the declaration under section 6(1) was issued on 14.08.2008 but was brought to the notice of the general public by affixing a copy of the same in the village only on 10.06.2009, such declaration is beyond the prescribed period for which the proceeding is vitiated in the eye of law.

3. It is the further case of the petitioners that though the Government proposed to acquire the land in village Siriapali for public purpose that to establishment of industry by IDCO but the Memorandum of Understanding dated 04.04.2007 between the Governor of Odisha and the opp. party no. 5 Vedanta Aluminium Ltd. indicates that the said private company agreed to pay IDCO or the Revenue authorities the cost of the land and properties standing thereon which clearly established that the land was not acquired for any public purpose but for a private company, such steps have been taken at the cost of livelihood of the petitioners which is malafide, illegal and violates the fundamental rights guaranteed under Articles 14 and 21 so also Article 300-A of the Constitution of India.

4. It is the further case of the petitioners that information supplied under RTI Act vide Annexure-5 indicated that the cost of acquisition out of public revenues in respect of the land acquisition case for village Siriapali was not available in the office of the opp. party no. 3, Special Land Acquisition Officer, Jharsuguda as it was a private project which made it clear that the land of the petitioners were acquired for a private project and not for any public purpose of the Government

and the entire expenses for acquisition of land was funded by the private company i.e. opp. party no. 5. In view of the infirmities in the land acquisition procedure as pointed out above, it was prayed to quash the notification under Annexure-1, declaration under Annexure-3 and the entire proceeding in L.A. Case No. 07 of 2006.

5. The writ petition was filed on 12.05.2014 and an additional affidavit was filed on 10.07.2014 on behalf of the petitioners indicating therein that the opp. party no. 3, Special Land Acquisition Officer, Jharsuguda issued notices on dated 08.06.2011 and 07.05.2014 to the petitioners to receive the compensation amount in the said land acquisition proceeding, copies of which were annexed to such affidavit.

6. On 30.07.2014 notices were issued to the opp. parties on the question of admission and an interim order was passed in Misc. Case No. 8447 of 2014 that any construction made on the case land shall be subject to the result of the writ petition.

7. A counter affidavit was filed on behalf of opp. parties nos. 1, 2, 3 and 6 indicating therein that all the statutory provisions as envisaged under sections 4, 5-A and 6 of 1894 Act have been followed meticulously with wide publication in the newspapers and not only in the conspicuous place of the locality but also by issuing individual notices inviting objections. The lands were unproductive and barren and there was no irrigation facility in the area. The lands were acquired by IDCO through Government for public purpose for establishment of industry and the IDCO has deposited the award amount which was passed in the year 2010. It is further indicated that no reason has been assigned by the petitioners in approaching this Court after a long lapse of six to seven years. No individual objection by any of the petitioners was filed indicating the land particulars. In the acquisition process, highest cost for the lands with 30% solatium and 12% interest was given to the land owners and there was no mala fide intention on the part of the Government to grab the agricultural land of the farmers. It is further indicated in the counter affidavit that the petitioners have suppressed material facts in the writ petition inasmuch as the notification under section 4(1) of 1894 Act was published in two Odia daily newspapers i.e. 'Matrubhasa' and 'Utkal Mail' on dated 25.07.2007 and 26.07.2007 respectively and the notification was published in the village and Panchayat Office on 10.08.2007 and finally the notification was published in the Odisha Gazette vide no. 1802 dated 29.09.2007. The copies of the newspapers were annexed to the counter affidavit. It is further mentioned in the counter affidavit that no objection under section 5-A of 1894 Act was made within the statutory period of thirty days from the date of publication of the notification under section 4(1) and the representation under Annexure-2 has been created for the purpose of this writ petition and the signature of the recipient of such representation is a fabricated one. Most of the signatories to such representation have already received their due compensation. Specific stand was taken in the counter affidavit that out of sixty nine signatures

in the representation, ten of them are not land losers and numbers of signatures were repeated and fifteen out of the sixty nine signatories have already received their compensation. Specific date wise publication of notification under section 4(1) of 1894 Act was indicated so also the publication of declaration under section 6(1). It is mentioned that the last publication of the notification under section 4(1) was made in the Odisha Extraordinary Gazette vide no. 1802 dated 29.09.2007 and the declaration under section 6(1) was made by the Government in Revenue and Disaster Management Department vide no. 35278 dated 14.08.2008 which is within statutory period of one year. It is further indicated that the declaration under section 6(1) was published on dated 27.09.2008 in two daily Odia newspaper namely 'Bharat Darsan' and 'Sambad Kalika' and copies of such publication were annexed to the counter affidavit. It is further mentioned that the land have been acquired by the Government of Odisha for IDCO, a corporation owned by the Government for establishment of industries which is as per section 3(f)(iv) of 1894 Act which speaks that 'public purpose' includes the provision of land for a corporation owned or controlled by the State. A further stand was taken that the Government of Odisha signed an MOU with Vedanta Aluminium Ltd. (now Vedanta Ltd.) for establishment of Aluminium Smelter and Captive Power Plant in the district of Jharsuguda, Odisha and the land was to be provided through IDCO on long term lease basis as industrial development was to be expedited in the interest of the State. The land cost and other administrative charges were deposited by the IDCO and the action of the opp. party-Government authorities was fair, bonafide and in the public interest. It is further indicated that the land was handed over to IDCO as per possession letter dated 23.06.2015 and deed dated 21.01.2017 after compliance of due process under Land Acquisition Act.

8. The opp. party no. 4 IDCO filed counter affidavit contending therein that it is a State owned statutory corporation and the object under the statute i.e. Odisha Industrial Infrastructure Development Act, 1980 (Orissa Act 1 of 1981), is to secure and assist rapid industrialization in the State including identification of land for industry and facilitation to the entrepreneur to establish industry. IDCO filed requisition for acquisition of private land measuring Ac.200.98 dec. in village Siriapali with the Special Land Acquisition Officer, Jharsuguda (opp. party no. 3) and the opp. party no. 3 requested IDCO to deposit money towards payment of establishment cost for acquisition of private land and accordingly, IDCO deposited the same on 15.12.2006 with the opp. party no. 3 whereafter the notification under 4(1) and declaration under section 6(1) of 1894 Act were made in due time. It is further indicated that when the opp. party no. 3 requested IDCO to deposit a sum of Rs. 9,63,41,542/-, such deposit was made on 24.11.2009 under intimation to the Collector, Jharsuguda. The opp. party no. 5 Vedanta Aluminium Ltd. submitted its withdrawal proposal for land measuring Ac.15.82 dec. out of Ac.200.93 dec. and accordingly a request in that respect was made by IDCO to the opp. party no. 3 which was ultimately done by the Government and possession of Ac.185.11 dec. of land was handed over to IDCO

on 23.06.2015. The A.D.M., Jharsuguda in its letter dated 07.12.2015 requested IDCO for reflection of the revised estimates for the acquired area of Ac.185.11 dec. in village Siriapali in the lease deed to be executed between the Collector, Jharsuguda with IDCO and accordingly, the required papers were submitted before the Collector for execution of the lease deed. It is further indicated that the allegations made by the petitioners are baseless and fabricated.

9. The opp. party no. 5 Vedanta Aluminium Ltd. filed counter affidavit wherein it is indicated that the opp. party no. 5 is not a 'State' within the meaning of Article 12 of the Constitution of India and hence not amenable to writ jurisdiction of this Court. Averments were taken reiterating the stand taken by the Government that the notification under section 4(1) was published in two regional daily newspapers and declaration under section 6(1) was published within one year from the date of notification under section 4(1) of 1894 Act. The land losers except a few have already received their compensation and others are not coming up to receive the compensation even after intimation/reminder by the authority. The stand taken by the State Government relating to publication of declaration in the daily newspapers under section 6(1) was also reiterated. It is further stated that the land acquisition for IDCO was for public purpose and IDCO has paid the cost assessed by the Special Land Acquisition Officer and the villagers have received their compensation. The Government of Odisha and Vedanta entered into an MOU for setting up Aluminium Smelter with Captive Power Plant in the district of Jharsuguda on 04.04.2007 and the Government agreed for allotment of the required land for setting of the project to IDCO. The Government conferred the responsibility to IDCO for allotment of land to the project as the IDCO has been made the nodal agency by the State of Odisha for acquisition of land for setting up industrial project in Odisha. After acquisition of land, the Collector, Jharsuguda transferred the ownership of land to IDCO under a long term lease for ninety nine years and on getting possession of the land, IDCO transferred the ownership of the land to Vedanta under a lease agreement for ninety years following necessary process. It is pointed out that when the award was passed in the land acquisition proceeding on 30.06.2010 and compensation has been received by the villagers to a large extent and there is inordinate delay in filing the writ petition and there are disputed questions of facts, the writ petition should be dismissed.

10. A rejoinder affidavit was filed on behalf of the petitioners to the counter affidavit filed by the opp. parties elaborating as to how the declaration under section 6(1) was made after expiry of the prescribed period of the publication of the notification under section 4(1). Reliance was placed on the audit report (G & SS) Volume 3 for the year ending March 2012 of the Government of Odisha which indicated that the IDCO was acquiring land for private promoters and the entire cost of acquisition was borne by the concerned promoters. It is further indicated that 95% of the land acquired are fertile agricultural land and their status were reflected in the record of rights. A further stand was taken that after notification under section 4(1) on dated 10.08.2007, the objection dated

05.09.2007 was sent to all the authorities including the opp. party no. 3 by registered post and it was also personally received by the opp. party no. 3. It is further stated that when there was objection relating to the acquisition of land, the opp. party no. 6, Sub-Collector, Jharsuguda issued notice to the villagers and a public meeting was held on 16.07.2011 in the presence of IDCO Authorities, Vedanta Authorities, Tahasildar, Jharsuguda and Special Land Acquisition Officer and the villagers stated about their objection under section 5-A but the authorities maintained indifferent attitude towards the grievances of the petitioners and they were unmindful about the livelihood of the petitioners which was affected due to such acquisition of land. Disputing the publications of the notification under section 4(1) and declaration under section 6(1) in the newspapers, a further stand was taken that if the ash pond plant is installed in the village, there would be serious environmental pollution causing health hazard to the mankind as well as the animals.

11. Mr. A.K. Nanda, learned counsel appearing for the petitioners contended that the acquisition of land of the petitioners for 'public purpose' as reflected in the notification under section 4(1) and declaration under section 6(1) of 1894 Act is completely false and contrary to the records. The Memorandum of Understanding under Annexure-6 between the Govt. of Odisha and the opp. party no. 5 would establish that the land was acquired to be handed over to a private company i.e. opp. party no. 5 and the cost of the land was to be paid by the opp. party no. 5 to the IDCO/Revenue Authorities which in turn to be disbursed to the land owners and therefore, the project involving L.A. Case No. 7 of 2006 in village Siriapali is a private project. He placed reliance on the report of CAG wherein it is indicated that acquisition of land for public purpose does not include acquisition of land for companies. Since IDCO was acquiring the land for a private promoter and the cost of acquisition was borne by the concerned promoter, it cannot be held to be an acquisition for 'public purpose'. Therefore, the action of the Government is a fraud on the power conferred upon it by the 1894 Act and thus the proceeding is liable to be quashed. Reliance was placed on the decision of the Hon'ble Supreme Court in case of *Devinder Singh v. State of Punjab* reported in (2008) 1 SCC 728 : A.I.R. 2008 S.C. 261. It is further argued that the last date of publication of the notification under section 4(1) was 29.09.2007 and the last date of declaration under section 6(1) was 10.06.2009 and as such the declaration was made one year and nine months after the notification which is beyond the mandatory period of one year and therefore, the land acquisition proceeding is vitiated. Reliance was placed in cases of *Ashok Kumar v. State of Haryana* reported in (2007) 3 SCC 470 : A.I.R. 2007 S.C. 1411 and *Devender Kumar v. State of U.P.* reported in J.T. 2011 (9) S.C. 390. It was further argued that sections 4(1) and 6(2) of 1894 Act mandate that the notification and the declaration respectively shall be published in two daily newspapers circulating in the locality in which the land is situated and at least one of such publication shall be in the regional language but the opp. party no. 3 under Annexure-5 disclosed that the copies of the newspapers in the said proceeding were not available in

the office and therefore, such publications as alleged are completely false. Highlighting the provision under section 5-A of 1894 Act, it was argued that when the petitioners submitted their objection under Annexure-2 which was received in the office of the opp. party no. 2 and copies of the same were also sent to different authorities including the opp. party no. 3 by registered post, opportunity of hearing should have been provided to the petitioners and for non-compliance of the mandatory provisions, the proceeding is vitiated in the eye of law. Reliance was placed in case of *Surinder Singh Brar v. Union of India* reported in (2013) 1 SCC 403. Repeated representations/objections were stated to have been submitted by the petitioners to the authorities to drop the land acquisition proceeding and the petitioners are continuing in cultivating possession of the case lands till date and since there is no change in the status of land, the writ petition cannot be dismissed on the ground of delay. Reliance was placed on the decision of the Hon'ble Supreme Court in case of *Vyalikaval House Building Co-op. Society v. V. Chandrappa* reported in (2007) 9 SCC 304 : A.I.R. 2007 S.C. 1151.

12. Mr. Rajat Kumar Rath, learned Senior Advocate appearing for the opp. party no. 5 on the other hand raised preliminary objection to the maintainability of the writ petition contending that the self-same relief was sought for by some of the petitioners i.e. petitioners nos. 2, 4, 6 and 11 in W.P.(C) No. 2132 of 2010 which was disposed of on 15.11.2016 and direction was issued to the petitioners of such writ application to approach the Special Land Acquisition Officer, Jharsuguda for getting the compensation amount. During pendency of such writ petition, this writ application has been filed suppressing the earlier filing and therefore, on account of suppression of material fact, the writ petition is liable to be dismissed. Reliance was placed in case of *K.D. Sharma v. SAIL* reported in (2008) 12 SCC 481. It was argued that declaration under section 6(1) of 1894 Act was made on 14.08.2008 as per Annexure-3 which is within one year from the last date of notification under section 4(1) which was published in the Odisha Gazette on 29.09.2007. Reliance was placed in case of *Urban Improvement Trust v. Bheru Lal* reported in (2002) 7 SCC 712. It was argued that no objection under section 5-A of 1894 Act has been filed and Annexure-2 is a forged document and therefore, the question of giving opportunity of hearing to the petitioners does not arise and when notification under section 6(1) has already been made and award has already been published, the proceeding cannot be challenged at this stage. Reliance was placed in case of *State of Tamil Nadu v. L. Krishnan* reported in (1996) 1 SCC 250, *Andhra Pradesh Industrial Infrastructure Corpn. Ltd. v. Chinthamaneni Narasimha Rao* reported in (2012) 12 SCC 797 and *Municipal Corporation v. I.D.I. Co. Pvt. Ltd.* reported in (1996) 11 SCC 501. It was further argued that since the notification under section 4(1) was made in the year 2007 and declaration under section 6(1) was made in the year 2008 and the first writ application filed in the year 2010, this second writ application filed in the year 2014 is not maintainable on the ground of delay. Reliance was placed in case of *Swaiika Properties (p) Ltd. v. State of*

Rajasthan reported in (2008) 4 SCC 695. While concluding his argument, Mr. Rath highlighted that the acquired land was for the 'public purpose' as a power plant is going to function and the power generated is to be utilized in the interest of general public and therefore, this Court should not interfere with such a project.

13. Mr. K.K. Mishra, learned Addl. Govt. Advocate supported the contentions raised by Mr. Rath and placed the counter affidavit and contended that all the procedural formalities as envisaged under Part-II of the 1894 Act were duly followed and since the petitioners have not approached this Court with clean hands and knocked at the portals of this Court at a belated stage, the writ petition should be dismissed. Reliance was placed in case of *Sawaran Lata v. State of Haryana* reported in (2010) 4 SCC 532 on the point of delay.

14. Mr. Jaganath Patnaik, learned Senior Advocate appearing on behalf of the opp. party no. 4 filed a short note of submission supporting the stand taken by the opp. party no. 5.

15. Adverting to the rival contentions raised at the bar, the following points are required to be adjudicated:

(i) Whether the notification under section 4(1) and declaration under section 6(1) of 1894 Act relating to acquisition of land of the petitioners in Mouza Siriapali were made for 'public purpose' or there was any malafidness in the act of the opposite parties?

(ii) Whether the declaration under section 6(1) of 1894 Act was made within stipulated period after the notification under section 4(1)?

(iii) Whether the notification and the declaration relating to acquisition of land were published in the daily newspapers as prescribed under the statute?

(iv) Whether objection relating to acquisition of land was filed under section 5-A of 1894 Act by the petitioners and if so, whether opportunity of hearing has been afforded to the objectors?

(v) Whether the writ petition is liable to be dismissed on the ground of delay and suppression of facts?

Discussion on point no.(i)

16. Mr. Nanda contended that the land in Mouza Siriapali was not acquired for any 'public purpose' but it was for a private project of the opposite party no. 5. He has relied upon the Memorandum of Understanding under Annexure-6 between the Governor of Orissa and the opposite party no. 5, Vedanta Aluminium Ltd., a company registered under the Companies Act, 1956. There is no dispute that as per clause (A) of the MOU, the cost of the land and properties (if standing thereon) etc. is to be paid by the opposite party no. 5 to IDCO or the Revenue Authorities.

17. In the counter affidavit filed by the State, a specific stand has been taken that the land has been acquired by the Govt. of Odisha for IDCO, a corporation owned by the State Govt. for establishment of industries and Govt. Odisha signed an MOU with Vedanta Aluminium Ltd. for establishment of Aluminium Smelter and Captive Power Plant in the district of Jharsuguda, Odisha. The IDCO has deposited the cost before the authority as assessed by the Special Land Acquisition Officer.

18. The expression 'public purpose' as per section 3(f)(iv) includes the provision of land for a corporation owned or controlled by the State. There is no dispute that IDCO is wholly owned and controlled corporation of Govt. of Odisha and it has been made nodal agency for acquisition of land for setting up industrial projects in Odisha. It appears that after acquisition of land, the Collector, Jharsuguda transferred the ownership of land to IDCO under a long term lease for ninety nine years and on getting possession of the land, IDCO transferred the ownership of land to Vedanta under a long term lease arrangement.

19. In case of Sooraram Pratap Reddy v. District Collector reported in (2008) 9 SCC 552 while analysing the expression 'public purpose' as defined under clause (f) of section 3 of 1894 Act, it is held that the expression 'public purpose' is of very wide amplitude. It is merely illustrative and not exhaustive. The inclusive definition does not restrict its ambit and scope. The expression is incapable of precise and comprehensive definition. It is used in a generic sense of including any purpose wherein even a fraction of the community may be interested or by which it may be benefited. A 'public purpose' is thus wider than a 'public necessity'. Purpose is more pervasive than urgency. That which one sets before him to accomplish, an end, intention, aim, object, plan or project, is purpose. A need or necessity, on the other hand, is urgent, unavoidable and compulsive. Public purpose should be liberally construed not whittled down by logomachies.

20. The notification under Annexure-1 and the declaration under Annexure-3 clearly indicate that for the public purpose, the land is to be acquired in Mouza Siriapali for establishment of industry by IDCO. As per the policy decision of the Government, the land acquisition proceeding was completed and the land acquisition for IDCO was for a public purpose and the policy decision of the Government has not been challenged. It is the settled proposition of law that in absence of illegality or violation of law, a Court of law will not interfere in policy matters of the Government.

21. Section 4(1) of 1894 Act expressly authorises the appropriate Government to issue the preliminary notification for acquisition of land likely to be needed for any public purpose or 'for a company'. Likewise section 6(1) declares that when the appropriate Government is satisfied that a particular land is needed for a public purpose or 'for a company', a declaration shall be made to that effect. It is thus clear that the appropriate Government may acquire land if such land is needed for any public purpose or 'for a company'. If it is so, acquisition will be governed by Part-II of 1894 Act and the procedure laid down in the said Part has

to be followed. Part-VII, on the other hand, deals with acquisition of land for companies. In such cases, previous consent of appropriate Government and execution of agreement for transfer of land are necessary and procedure laid down in that Part is sine qua non for the acquisition. 1894 Act contemplates acquisition for (i) public purpose and (ii) for a company; thus, conveying the idea that acquisition for a company, is not for a public purpose. The purposes of public utility, referred to in sections 40 and 41 of 1894 Act are akin to 'public purpose'. Hence, acquisition of land for a 'public purpose' as also acquisition 'for a company' are governed by consideration of public utility. Procedure for the two kinds of acquisition is different and if it is for a company, then acquisition has to be effected in accordance with the procedure laid down in part-VII. Not only Annexures 1 and 3 indicate the public purpose behind the acquisition of land but also the Memorandum of Understanding under Annexure-6 and the counter filed by the opposite party no. 5 indicate that the opposite party no. 5 required the land for the purpose of setting up Aluminum Smelter and Captive Power Plant. Establishment of such an industry in Odisha will speed up the developmental activities of the State with enlightenment of employment. It is stated that such establishment is inevitable for the prosperity of the State and it is the policy decision of the Government and also in the public interest. Economy of a nation and its development depends upon the growth of industrialization. Industries serve the livelihood of the citizens. Poverty and unemployment get eradicated through industrialization. Whether the acquisition is for 'public purpose' or not, prima facie Government is the best Judge. Normally, in such matters, a writ Court should not interfere by substituting its judgment for the judgment of the Government.

22. Mr. Nanda relied upon the decision of the Hon'ble Supreme Court in case of Devinder Singh (Supra) wherein it is held that when an order is passed without jurisdiction, it amounts to colourable exercise of power. Formation of opinion must precede application of mind. The authorities must act within the four-corners of the statute. A statutory authority is bound by the procedure laid down in the statute. We do not find in the case in hand that there is any lack of jurisdiction with the authorities who have passed the impugned notification under section 4(1) or made declaration under section 6(1) of 1894 Act. The procedural aspect as laid down under Part-II of the Act has been duly followed.

23. Therefore, we are not inclined to accept the submission made by the learned counsel for the petitioners that no 'public purpose' is involved in the acquisition of land by the Government for establishment of industries by the IDCO in mouza Siriapali or there is any malafidness in the act of the opp. parties.

Discussion on point no.(ii)

24. Section 6 of 1894 Act deals with declaration that the land is required for a public purpose, or for a company. Such a declaration is to be made by the appropriate Government only after considering the report, if any made under section 5-A. The proviso (ii) to section 6(1) indicates that no declaration in

respect of any particular land covered by a notification under section 4(1) shall be published after the expiry of one year from the date of publication of the notification.

25. Section 4(1) of 1894 Act lays down that whenever it appears to the appropriate Government that land in any locality is needed or is likely to be needed for any public purpose or for a company, then notification to that effect is required to be published in (i) the official gazette; (ii) two daily newspapers having circulation in that locality of which, one shall be in the regional language; and (iii) it is also incumbent on the part of the Collector to cause public notice of the substance of such notification to be given at convenient places in the locality. It is relevant to mention that the last of the dates of such publication and the giving of such public notice is treated as the date of publication of the notification. The purpose of publication of the notification is two-fold, first, to ensure that adequate publicity is given so that land owners and persons interested will have an opportunity to file their objections under section 5-A of the Act, and second, to give the land owners/occupants a notice that it shall be lawful for any officer authorized by the Government to carry out the activities enumerated in sub-section (2) of section 4 of the Act (Ref:-V.K.M. Kattha Industries Pvt. Ltd. v. State of Haryana reported in (2013) 9 SCC 338 : A.I.R. 2013 S.C. 3557).

26. The materials available on record indicates, as per Anneuxre-1 that the notification under section 4(1) was issued on 04.07.2007 and apart from publication in the newspapers, it was published in Mouza Siriapali for public notice on 10.08.2007 and the notification was finally published in Odisha Gazette vide No. 1802 dated 29.09.2007. Since the last of the dates of such publication and giving of such public notice is to be treated as the date of publication of the notification, we hold that the date of publication of such notification under section 4(1) of 1894 Act is 29.09.2007.

27. The words "publish" and "from the date of publication of the notification" occurring in proviso (ii) to section 6(1) of 1894 Act refer to the publication of section 4(1) notification and have no reference to the publication of any notification under section 6. Under section 6(1), it is only a declaration which is required to be made, the time limit being within one year of the publication of section 4(1) notification. The main purpose for the issuance of declaration under section 6 is provided by subsection (3), that the declaration shall be conclusive evidence that the land is needed, inter alia, for a public purpose and after the making of the declaration, the appropriate Government may acquire the land in the manner provided by the Act. Sub-section (2) requires the declaration to be published in the Official Gazettee and in two daily newspapers circulating in the locality in which the land is situated and in addition thereto, the Collector is also required to cause public notice of the substance of the declaration to be given in the convenient places in the said locality. Sub-section (2) of section 6 does not prescribe any time limit within which the declaration made under section 6(1) is

to be published. It is well known that after an order or declaration is made, there can be a time gap between the making of the order or a declaration and its publication in the Official Gazette. Whereas the time limit for the making a declaration is provided under section 6(1), the legislature advisedly did not provide for any such time limit in respect of steps required to be taken under sub-section (2) of section 6.

28. In case of *Devender Kumar Tyagi (Supra)*, it is held that the notification under section 4 has to be published in the manner laid down therein. As against this, under section 6, a declaration has to be first made and that declaration is then to be published in the manner provided in section 6(2) of the Land Acquisition Act. Also, the proviso (ii) to section 6(1) lays down a time-limit within which declaration has to be made. The said proviso (ii) significantly only provides a time-limit for a declaration and not for publication as it has been incorporated in sub-section (1) of section 6 of the Land Acquisition Act.

29. If the contention of Mr. Nanda, learned counsel for the petitioners that the last of the dates of such declaration through publication is to be accepted as the relevant date for the purpose of proviso (ii) to section 6(1) of 1894 Act then the effect would be that not only the declaration would have to be made within the time prescribed under the proviso(ii) to section 6(1) but all other steps, like publication in the daily newspapers and the Collector causing public notice of the declaration to be given at convenient places in the locality, must also be completed within a period of one year of section 4(1) notification. This could certainly not be a consequence contemplated by the legislature. The purpose of section 6 notification being to give a final declaration with regard to the need of the land for public purpose, the interest of the land owners was sufficiently safeguarded with the requirement of the making of the declaration under section 6(1) within a prescribed period. It is difficult for us to read into sub-section (2), the provisions of the proviso (ii) to section 6(1) which relates to the time limit for making a declaration from the date of publication of notification under section 4. (Ref:- *S.H. Rangappa v. State of Karnataka*: (2002) 1 SCC 538 : A.I.R. 2001 S.C. 3863).

30. In the case in hand, the declaration under section 6(1) was made on 14.08.2008 as per Annexure-3. Though it was published subsequently in the Extraordinary Gazette of the State Government and two daily newspapers and public notice of such declaration was also made after the declaration under Annexure-3 but we are of the view that the relevant date of declaration for the purpose of the proviso (ii) to section 6(1) is 14.08.2008. As we have already hold that the date of publication of the notification under section 4(1) was 29.09.2007, since declaration under section 6(1) was made on 14.08.2008, it is within the prescribed period of one year.

31. The decision cited by the learned counsel for the petitioner in case of *Ashok Kumar v. State of Haryana* reported in (2007) 3 SCC 470 : A.I.R. 2007 S.C. 1411 states that the proviso appended to sub-section (1) of section 6 is in the

negative term. It is, therefore, mandatory in nature. Any declaration made after the expiry of one year from the date of publication of the notification under sub section (1) of section 4 would be void and of no effect. An enabling provision has been made by reason of the explanation appended thereto, but the same was done only for the purpose of extending the period of limitation and not for any other purpose. The purport and object of the provisions of the Act and in particular the proviso which has been inserted by Act 68 of 1984 and which came into force w.e.f. 24.09.1984 must be given its full effect. The said provision was inserted for the benefit of the owners of the land.

32. The decision relied upon by Mr. Rath in case of Urban Improvement Trust v. Bheru Lal reported in (2002) 7 SCC 712 states that section 6(1) does not require that such declaration could not be published in the Official Gazette after expiry of one year from the date of publication of the notification under section 4(1). Time-limit of one year is prescribed to a declaration to be made that land is needed for a public purpose under the signature of a Secretary or authorised officer to such Government.

33. Therefore, the contention of the learned counsel for the petitioners that the declaration under section 6(1) was made beyond the prescribed period from the date of publication of the notification under section 4(1) is baseless and cannot be accepted.

Discussion on point no.(iii)

34. Mr. Nanda, learned counsel for the petitioners contended that there was no paper publication as required under section 4(1) and 6(2) of 1894 Act is difficult to be accepted.

35. In the writ petition, in paragraph no. 3, it is mentioned that there was no newspaper publication in the petitioners' village/locality in respect of the notification. In the rejoinder affidavit dated 10.04.2018, it is mentioned that the report obtained under the RTI Act under Annexure 5 indicates that no newspaper was available publishing 4(1) notification and 6(1) declaration. It is further mentioned that the newspapers like 'Matrubhasa' and 'Utkal Mail' are not at all in circulation in the village of the petitioners and the publication of 6(1) notification in newspapers like 'Bharat Darshan' and 'Sambad Kalika' is a false and fabricated story.

36. The counter filed by the State Government clearly indicates that the notification under section 4(1) was published on 25.07.2007 and 26.07.2007 in two daily Oriya newspapers namely 'Matrubhasa' and 'Utkal Mail' and the copies of the newspapers were annexed as Annexure-A/1 and A/2 to the counter affidavit. Similarly, it is mentioned that the declaration under section 6(1) was published on 27.09.2008 in two Odia newspapers namely 'Bharat Darshan' and 'Sambad Kalika' and the copy of the news paper is annexed as Annexure-B.

37. In view of the stand taken by the State Government in the counter affidavit

that there has been paper publications in accordance with the procedure prescribed under 1894 Act and after going through the paper publications annexed to the counter affidavit and since disputed questions of facts cannot be adjudicated in the writ petition, we are unable to accept the contention raised by Mr. Nanda that there was no paper publication of the notification and the declaration in the two daily newspapers circulating in the locality.

Discussion on point no.(iv)

38. Mr. Nanda, learned counsel for the petitioners contended that the petitioners submitted their objection under Annexure-2 on 05.09.2007 objecting to the acquisition of land in their locality but no opportunity of hearing was given to the petitioners which is mandatory in view of section 5-A of 1894 Act and therefore, the proceeding should be quashed. He relied upon a decision of the Hon'ble Supreme Court in case of Surinder Singh Brar (supra) wherein it was held that section 5-A embodies the most important dimension of the rules of natural justice. What needs to be emphasized is that hearing required to be given under section 5-A (2) to a person who is sought to be deprived of his land and who has filed objection under section 5-A(1) must be effective and not an empty formality. The Collector who is enjoined with the task of hearing the objectors has the freedom of making further enquiry as he may think necessary. In either eventuality, he has to make report in respect of the land notified under section 4(1) or make different reports in respect of different parcels of such land to the appropriate Government containing his recommendations on the objections and submit the same to the appropriate Government along with the record of the proceedings held by him for the latter's decision. The appropriate Government is obliged to consider the report, if any, made under section 5-A (2) and then record its satisfaction that the particular land is needed for a public purpose. This exercise culminates into making a decision that the land is needed for a public purpose. Any violation of the substantive right of the land owners and/or other interested persons to file objections or denial of opportunity of personal hearing to the objector(s) vitiates the recommendations made by the Collector and the decision taken by the appropriate Government on such recommendations. The recommendations made by the Collector without duly considering the objections filed under section 5-A(1) and submissions made at the hearing given under section 5-A(2) or failure of the appropriate Government to take objective decision on such objections in the light of recommendations made by the Collector will denude the decision of the appropriate Government of statutory finality.

39. In the writ petition in paragraph 3, it is mentioned that when the petitioners and similarly affected farmers submitted representation to the opposite party no. 2 to drop the land acquisition proceeding in respect of their agricultural lands which is annexed as Annexure-2, no opportunity of hearing has been afforded to them. Annexure-2 is dated 05.09.2007 and someone seems to have received the copy on the very day. The State Government in its counter affidavit has

specifically mentioned that no objection has been received within stipulated period after publication of notification under section 4(1) as prescribed under law and the document/representation under Annexure-2 has been created with a sole intention to be annexed to the writ petition and the petitioners have also fabricated the signature on the receipt part of the representation and there is no record of receipt or filing of such document in the office of the Special Land Acquisition Officer.

40. Being cornered with such a stand taken by the State Government, the petitioners in their rejoinder affidavit have stated in paragraph 5 that after the public notice of 4(1) notification vide Annexure-1, they submitted their objection on 05.09.2007 which was not only personally received by the Special Land Acquisition Officer but also copy of the same was sent to all the authorities including opp. party no. 3 by registered post and the copies of the postal receipts were annexed. In the written note of submission filed by the petitioners, it is stated that the petitioners submitted their objection under Annexure-2 on 05.09.2007 which was received by the office of opp. party no. 2 and on the same day, the petitioners also sent representation/objection to all other authorities including opp. party no. 3 by registered post.

41. Therefore, it appears that inconsistent stand has been taken by the petitioners relating to filing of written objection to the acquisition of the land in their locality. The submission of objection to different authorities including opp. party no. 3 by registered post has not been averred in the writ petition. A stand has been taken in the rejoinder affidavit that the objection dated 05.09.2007 was personally received by the Special Land Acquisition Officer (opposite party no. 3) whereas in the note of submission, it is stated that the objection under Annexure-2 was submitted on 05.09.2007 which was received in the office of opposite party no. 2. The Special Land Acquisition Officer filing a counter affidavit has denied about such aspect. In the counter affidavit, it has also been pointed out that out of sixty nine signatories in the representation under Annexure-2, ten are not land losers as their land was not considered for acquisition and some of the signatures have been repeated in different orders and in different languages.

42. Since disputed questions of facts cannot be adjudicated in the writ petition and the stand taken by the petitioners relating to filing of objection under section 5-A of 1894 Act is inconsistent, we are of the view that it cannot be said that any objection was filed by the petitioners and therefore, the question of giving opportunity of hearing to them does not arise.

Discussion on point no.(v)

43. The notification under section 4(1) was made in the year 2007 and the declaration under section 6(1) was made in the year 2008. It appears from the disposed of writ petition i.e. W.P.(C) No. 2132 of 2010 that the petitioners nos. 2, 4, 6 and 11 along with others filed such petition earlier challenging the selfsame notification under section 4(1). The said writ petition was disposed of on

15.11.2016 as some of the petitioners received compensation amount and others were given liberty to approach the Special Land Acquisition Officer, Jharsuguda for getting the compensation amount. In the present writ petition, the filing of the earlier writ petition has not been mentioned.

44. In case of K.D. Sharma v. SAIL reported in (2008) 12 SCC 481, it is held that the party who invokes the extraordinary jurisdiction of the Supreme Court under Article 32 or of a High Court under Article 226 of the Constitution is supposed to be truthful, frank and open. He must disclose all material facts without any reservation even if those are against him. He cannot be allowed to play "hide and seek" or to "pick and choose" the facts he likes to disclose and to suppress (keep back) or not to disclose (conceal) other facts. The very basis of the writ jurisdiction rests in disclosure of true and complete (correct) facts. If material facts are suppressed or distorted, the very functioning of the writ Courts and exercise would become impossible. The petitioner must disclose all the facts having a bearing on the relief sought without any qualification. This is because "the Court knows law but not facts".

45. Any one who takes recourse to method of suppression in a Court of law, is, actuality, playing fraud with the Court, and the maxim suppressio veri, expression falsi i.e. suppression of the truth is equivalent to the expression of falsehood, gets attracted. (Ref:- (2013) 55 Orissa Criminal Reports (SC) 881, Moti Lal v. Prem Prakash).

46. We are of the humble view that at the time of filing this writ petition, the petitioners have suppressed about the filing of the earlier writ petition which was subjudiced at that time.

47. Moreover, this writ petition which was filed in 2014 which is after six years of the declaration made under section 6 and after the award was published.

48. In case of State of Tamil Nadu v. L. Krishnan reported in (1996) 1 SCC 250, it is held that when the declarations under section 6 were made in the year 1978 and the writ petitions were filed sometime in the year 1982-83 when the awards were about to be passed, the laches of this nature was held to be fatal to the writ petitioners.

49. In case of Andhra Pradesh Industrial Infrastructure Corpn. Ltd. v. Chinthamaneni Narasimha Rao reported in (2012) 12 SCC 797, it was held that the declaration under section 6 of the Act was made on 07.08.1996 and the award was made on 07.01.1998 and a petition challenging the validity of the declaration under section 6 of the Act was filed in November 1998 which were held to be a belated stage and it was further held that if the land owners were really aggrieved under section 6 of the Act, they ought to have challenged the same immediately after the declaration under section 6 was made and there was no reason for the land owners to wait a few years for challenging the declaration and for that reason the Hon'ble Court did not interfere with the acquisition proceedings.

50. In case of *Municipal Corporation v. I.D.I. Co. Pvt. Ltd.* reported in (1996) 11 SCC 501, it is held that when there is inordinate delay in filing the writ petition and when all steps taken in the acquisition proceeding have become final, the Court should be loath to quash the notifications. When the award was passed and possession was taken, the Court should not exercise its power to quash the award.

51. In case of *Swaika Properties (P) Ltd. v. State of Rajasthan* reported in (2008) 4 SCC 695, it is held that a writ petition challenging the notification for acquisition of land, if filed after the possession having been taken, is not maintainable.

52. In case of *Sawaran Lata v. State of Haryana* reported in (2010) 4 SCC 532, it is held that when a person challenges section 4 notification on any ground, it should be challenged within a reasonable period, and if the acquisition is challenged at a belated stage, the petition deserves to be dismissed only on this count.

53. Though Mr. Nanda placed reliance in case of *Vyalikaval House Building Co-op. Society (supra)*, wherein it is held that when the acquisition has been found to be totally malafide and not for bonafide purpose, the ground of delay and acquiescence has no substance but we do not find any malfideness in the conduct of the opp. parties in acquiring the land in mouza Siriapali for public purpose.

54. It appears that after the declaration under section 6(1) was made in the year 2008, award was passed in 2010. The compensation amount has been received by the villagers of mouza Siriapali to a large extent. The possession of Ac.185.11 dec. of land was handed over to IDCO on 23.06.2015 and deed was executed on 21.01.2017. When the petitioners have approached this Court six years after the declaration under section 6(1), we are of the view that the writ petition suffers not only on the ground of laches but also on the ground of suppression of material facts.

55. In view of the foregoing discussions, we find no merit in the writ petition which is accordingly dismissed. The petitioners whose land have been acquired and not received the compensation amount as yet are at liberty to approach the opposite party no. 3 Special Land Acquisition Officer, Jharsuguda for getting the compensation amount. No costs.