# THE HIGH COURT OF ORISSA : CUTTACK

**W.P.(C) Nos.6715 of 2011, 30882 of 2011, 22838 of 2011, 27628 of 2011, 17476 of 2009, 9326 of 2009, & 15042 of 2009**

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In the matter of an application under Articles 226 & 227 of the Constitution of India.

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**(In W.P.(C) No.6715 of 2011)**

Sachalabala Sethy and Ors. ..... Petitioners

-Versus-

Chief Secretary and Chief Development Commission, Orissa and others ..... Opp. Parties

For Petitioners : Mr.Trilochan Barik

For Opp. Parties : Mr. Ashok Mohanty, Advocate General (For O.P.Nos.1 to 5)

Mr. S.K.Padhi, Sr. Advocate
M/s.M.Padhi, A.Dash, B.Panigrahi, S.B.Dash, S.S.Mohanty & H.K.Panigrahi
(For O.P. No.6)

**(In W.P.(C) No.30882 of 2011)**

Budhi Bewa and Ors. ..... Petitioners

-Versus-

Commissioner-cum-Secretary, Revenue and Disaster Management, Odisha and others ..... Opp. Parties

For Petitioners : Mr.Trilochan Barik

For Opp. Parties : Mr. Ashok Mohanty, Advocate General (For O.P.Nos.1 to 3)

M/s. H.K.Panigrahi, B.K.Das & N.Tripathy
(For O.P. No.4)

Mr.J.Pattnaik, Sr. Advocate
M/s.B.Mohanty, T.K.Patnaik, A.Patnaik,
S.Patnaik, R.P.Ray, V.S.Rayaguru
& M.S.Rizvi
(For O.P. No.5)

**(In W.P.(C) No.22838 of 2011)**

Brahmani Muduli @ Bewa and Ors. ..... Petitioners

-Versus-

Chief Secretary and Chief
Development Commission, Odisha ..... Opp. Parties

For Petitioners : Mr.Trilochan Barik & R.C.Bhoi

For Opp. Parties : Mr. Ashok Mohanty, Advocate General
(For O.P.Nos.1 to 6)

Mr.S.K.Padhi, Sr. Advocate
M/s.M.Padhi, A.Das, B.Panigrahi,
H.K.Panigrahi, B.K.Das, N.Tripathy
& C.Samantray.
(For O.P. No.7)

**(In W.P.(C) No.27628 of 2011)**

Sankar Roul and Ors. ..... Petitioners

-Versus-

Commissioner-Cum-Secretary,
Revenue and Disaster Management,
Odisha and Ors. ..... Opp. Parties

For Petitioners : M/s.(Dr.)A.K.Mohapatra,
A.K.Mohapatra, N.C.Rout,
S.K.Padhi, S.K.Mishra & T.Dash

For Opp. Parties : Mr. Ashok Mohanty, Advocate General
(For O.P.No.1)

Mr.S.K.Padhi, Sr. Advocate
M/s.M.Padhi, B.Panigrahi,
B.K.Das, N.Tripathy, S.Das
& S.S.Mohanty.
(For O.P. No.2 & 4)

Mr.J.Pattnaik, Sr. Advocate,
M/s.B.Mohanty, T.Pattnaik, A.Pattnaik,
S.Patnaik, R.P.Ray, B.S.Rayaguru.
(For O.P. No.3)

**(In W.P.(C) No.17476 of 2009)**

Damodar Chayani & Ors. ..... Petitioners

-Versus-

State of Odisha and Ors. ..... Opp. Parties

For Petitioners : Mr.S.K.Das, Sr. Advocate
M/s.N.N.Mohapatra & S.K.Mohanty

For Opp. Parties : Mr. Ashok Mohanty, Advocate General
(For O.P.Nos.1 to 4)

Mr.J.Pattnaik, Sr. Advocate
M/s.D.Mohanty, T.Pattnaik, S.Pattnaik,
A.Pattnaik & B.S.Rayaguru
(For O.P. No.5)

Mr.S.K.Padhi, Sr. Advocate
M/s.M.Padhi, B.Padhi, H.K.Panigrahi,
B.K.Das, N.Tripathy
(For O.P.No.6)

**(In W.P.(C) No.9326 of 2009)**

Chaturbhuja Behera and Ors. ..... Petitioners

-Versus-

State of Odisha and Ors. ..... Opp. Parties

For Petitioners : M/s.Sachidananda Sahoo & P.R.Bhuyan

For Opp. Parties : Mr. Ashok Mohanty, Advocate General
(For O.P.Nos.1 to 3)

Mr.S.K.Padhi, Sr. Advocate
M/s.M.Padhi, B.Panigrahi,
H.K.Panigrahi, B.K.Das, N.Tripathy
& J.K.Dash.
(For O.P. No.4)

**(In W.P.(C) No.15042 of 2009)**

Pramesh Ch. Mohapatra and Ors. ..... Petitioners

-Versus-

State of Odisha and Ors. ..... Opp. Parties

For Petitioners : M/s.Sachidananda Sahoo & P.R.Bhuyan

For Opp. Parties : Mr. Ashok Mohanty, Advocate General
(For O.P.Nos.1 to 3 & 6)

Mr.J.Pattnaik, Sr. Advocate,
M/s.B.Mohanty, T.Pattnaik, A.Pattnaik,
S.Patnaik, R.P.Ray &
B.S.Rayaguru.
(For O.P. No.4)

Mr.Pinaki Mishra, Sr. Advocate
M/s. M.Padhi, A.Das & B.Panigrahi
(For O.P. No.5)

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**P R E S E N T:**

**THE HON'BLE MR. JUSTICE INDRAJIT MAHANTY.**
**&**
**THE HON'BLE MR. JUSTICE BISWANATH MAHAPATRA.**

Date of hearing: 02.04.2014 Date of Judgment: 16.05.2014

***I. Mahanty, J.*** The present batch of writ applications has come to be filed by the petitioner Charidesa Krusak Surakhya Sangha and several land losers seeking to challenge the validity of the acquisition of land made by the Industrial Development Corporation of Odisha (hereinafter referred to as the 'IDCO') for the purpose of setting up a thermal power plant by M/s. KVK Nilachal Pvt. Ltd. (hereinafter referred to as the 'KVK').

***2.*** At the commencement of hearing, we requested the learned counsel for the respective parties in this batch of cases to make out categories on the issues raised and to bunch the various cases in each such category. Accordingly, on the consent of the learned counsel representing the various parties, four categories were made in the following manner. (The respective cases which fall under each category are indicated under each head).

| | |
|---|---|
| **Category-I** | Challenge to Land Acquisition Proceedings undertaken by the State Government for acquiring the land in four villages namely, Rahangol, Dalua, Khanduali and Kandarei, PS: Gurudijhatia, Tahasil: Athagarh, Dist: Cuttack on the requisition made by IDCO for the purpose of setting up of a thermal power plant by KVK. |
| 01. | W.P.(C) No.15042 of 2009 |
| 02. | W.P.(C) No.30882 of 2011 |
| 03. | W.P.(C) No.6715 of 2011 |
| 04. | W.P.(C) No.22838 of 2011 |
| 05. | W.P.(C) No.17476 of 2009<br>RVPET No.81 of 2010 |
| 06. | W.P.(C) No.9326 of 2009 |
| | |
| **Category-II & III** | Challenge to the alienation of Government land under the OGLS Act, illegal sale of Government land, illegal sale of SC & ST, Smashan, common land.<br><br>Challenge to the validity of Notification U/s.73(c) of the Odisha Land Reforms Act, 1960 as well as challenge to the private purchases made by KVK for its thermal power plant. |
| 08. | W.P.(C) No.2065 of 2010 |
| 09. | W.P.(C) No.7303 of 2011 |
| 10. | W.P.(C) No.11738 of 2009 |
| 11. | W.A. No.211 of 2012 |
| 12. | W.P.(C) No.15988 of 2009 |
| 13. | W.P.(C) No.27845 of 2011 |
| | |

| | |
|---|---|
| **Category-IV** | Challenge to lack of permissions and clearances for construction of the project, lack of forest clearance, lack of wildlife clearance. |
| 14. | W.P.(C) No.9384 of 2012 |
| 15. | W.A. No.321 of 2011 |
| 16. | W.P.(C) No.30369 of 2011 |
| 17. | W.P.(C) No.3926 of 2010 |

***3.*** For the convenience of adjudication, we have proceeded to deal with the aforesaid cases category-wise and, accordingly, the present judgment is confined to the issues raised in Category-I i.e. challenge to Land Acquisition Proceedings. It would be pertinent to note herein that separate judgment will be delivered for each category of issue raised separately.

***4.*** In the background of the aforesaid challenge it now become essential to take note of certain facts, which are not in dispute. A Memorandum of Understanding (hereinafter referred to as 'MOU') was signed between the Government of Odisha and KVK on 26.09.2006 and the relevant portion of the said MOU relating to land reads as follows:

> "A. Land:(i) KNPL will require approximately 1000 acres of land for the purpose of setting up the thermal power plant and associates facilities (colony, coal transportation system, water transportation system, power evacuation system, ash disposal and other infrastructural facilities).
>
> ii) KNPL agrees to fully comply with the stipulations of the Government as per its policy in this regard. For rehabilitation of displaced families, rehabilitation and Resettlement (R&R) package as notified by the State Government as well as any

special stipulation relating to scheduled areas as applicable shall be followed.

iii) The government agrees to acquire the required land as per Clause(i) above and hand over the required land free from all encumbrances to KNPL through Odisha Industrial Infrastructure Development Corporation (IDCO) for the project and allied facilities.

iv) KNPL agrees to pay the cost of the land to IDCO in case the land is acquired for the purpose and to the Revenue authorities in case the land is Government land along with the rehabilitation cost and other related charges. In case the Project is abandoned for some reason or other, all required rehabilitation cost shall be borne by the KNPL in the same manner as if the project has been implemented. All incidental charges paid by the KNPL for such land acquisition paid to various authorities will stand forfeited."

***5.*** The K.V.K. had selected land for acquisition originally at Gurudijhatia in Cuttack district and, accordingly, the Department of Energy, Government of Odisha had approved the acquisition of private land in March, 2007. The Department of Revenue & Disaster Management pursuant to such an administrative approval had issued a notification under Section 4(1) of the Land Acquisition Act, 1894 (hereinafter referred to as the 'L.A. Act'). It is admitted that certain objections were raised before the Collector, Cuttack. During hearing of objections and as a consequence of which, the said notification under Section 4(1) was not proceeded with.

Thereafter, a new site at a new location comprising of villages-Rahangol, Dalua, Khanduali, Kandarei, Rampei and Khuntuni

of Athagarh Tahasil was identified. The new proposal as requested by KVK was for total area of 927.45 acres, which included:

(i) non-forest Government land of 207.69 acres;

(ii) forest land of 192.90 acres; and

(iii) private land of 526.96 acres.

The Industrial Promotion and Investment Corporation of Odisha (IPICOL, the Nodal agency for setting up of the industries in the State) recommended that the concerned land may be acquired. Under cover of their letter dated 19.02.2008, the IPICOL enclosed a copy of the land schedule to the Department of Energy and the Department of Energy on 26.06.2008 issued an administrative approval "for acquisition of private land for the purpose of power plant proposed by the KVK". The administrative approval was for acquisition of private land measuring 548.38 acres in the specified four villages of Athagarh Tahasil of Cuttack district and it is further stated that the acquisition of private land was for the purpose of proposed power plant project of KVK. After the administrative approval was accorded, a fresh notice under Section 4(1) of the Land Acquisition Act was thereafter issued by the Revenue & Disaster Management Department of the Government of Odisha on 11.07.2008 for all the land situated in the four villages published in the Odisha Gazette on 02.08.2008 on the requisition made by the IDCO a sample copy of which is extracted herein below:

**"ORISSA GAZETTEE**
EXTRAORDINARY
PUBLISHED BY AUTHORITY

No.1461 CUTTACK SATURDAY AUGUST 2, 2008/SRAVANA 11,1930

REVENUE & DISASTER MANAGEMENT DEPARTMENT
NOTIFICATION
DATE 11TH JULY 2008

No.29794-LA (B)-53/2008-Cuttack-RDM-Govt. of Orissa being satisfied that acquisition of land in village Rahangole P.S: Gurudijhatia, Tahesil Athagarh, District Cuttack is required to be made immediately for establishment of Industry by IDCO for the public interest at the expense of the Govt. It is therefore notified that land measuring 254.821 Acres in the above village is required to be acquired for the above the purpose as per the appended land schedule.
This notification Under Section 4(1) of 1894 as amended as per LA (Amendment) Act, 1984 is published for the information of all concerned.

District Administrative and the Project Proponent will take full responsibility of implementation of rehabilitation & Resettlement Policy, 2006 of Government of Orissa.

A map showing the above land will be available for inspection during office hours in the office of the Land Acquisition Collector, Cuttack.

Land Schedule is attached herewith.

**By the Order of the Governor,**
**Mohan Prasad Mishra,**
**Joint Secretary"**

***6.*** A total number of 62 notices were issued to 62 individuals calling upon them to submit their objections, if any, and objection petitions were received from 62 objectors. From among the objections received, 47 petitioners have attended the hearing in the chamber of

the Collector, Cuttack on 25.06.2009 and 15 numbers of objectors did not attend the hearing though notices were served on them. All objections were identical in nature and cyclostyled and two category of objections were filed which are quoted hereunder.

"ENGLISH TRANSLATION OF OBJECTIONS FILED AGAINST NOTIFICATION ISSUED U/S.4(1)-GENERAL PERSONS

L.A. Case No.8/08

TO

The Land Acquisition Officer, Cuttack.

Sub: In the matter of 4(1) notice issued for acquisition of the following land.

Ref: Notification No.29813 dt.11.07.08 u/s 4(1) of the L.A. Act.

Sir,

We Sri Panu Sahu, S/o Late Natha Sahu, village-Khanduali, Panchayat-Kandarei, Ps-Gurudijhatia, Dist-Cuttack states that the following lands are recorded in our name and you have issued notice u/s.4(1) to acquire those lands for KVK Nilachal Power (Pvt.) Ltd.

We state that the said land is our only property and we have no other land except this land. We are maintaining us as well as our family by cultivating this land. Since we are not listed in the displaced list, we cannot maintain our family if this land will be acquired. We will be unable to purchase any land at distance places by the amount we will receive in lieu of the land, also we will not be able to cultivate the land after purchased. We will be landless if this land will be acquired and there will be no other means of our livelihood. So we will not give this land by any means.

Therefore we humbly request you to delete this land from the list of acquisition.

Sd/-
Panu Sahoo
Signature

08/08/2008

Scheduled of Land
Village-Khanduali
Khata No.106/118
Plot No.46
Area-0.64

ENGLISH TRANSLATION OF OBJECTIONS FILED AGAINST NOTIFICATION ISSUED U/S.4(1)-ST/SC PERSONS

L.A. Case No.10/08

Respected,

Land Acquisition Officer,
Cuttack.

Sub: Regarding Notice U/S 4(1) of the L.A. Act for Acquisition of the following lands.

Ref: Notification No.29807 dt.11.07.08 u/s 4(1) of the L.A. Act.

Sir,

We belong to Scheduled Tribe & Scheduled Caste community, the following land stands recorded in our name and 4(1) Notice has been issued to us for acquisition of the said land to give to Nilachal Company.

It may be mentioned here that the Govt. has enacted laws with a view not to make landless to SC & ST persons and there will be violation of the said law if we are made landless. We are maintaining our family by cultivating this land. We cannot transfer this land.

Therefore we humbly request you to delete this land from the list of acquisition.

Copy forwarded to the Sub-Collector, Athagarh for information with request to take adequate steps not to acquire this land.

Bilash Naik
S/o. Nabina Naik
08/08/2008

Sd/-
(Bilash Naik)
Signature
Dalua

Scheduled of Land
Village-Dalua
Khata No.44"
Plot No.311/503, 313/504, 358,344,
304/500,359,375,362,364,368,370,
340,341,348,350,351,327
Area- Ac.3.990 dec.

***7.*** Apart from the aforesaid identical objections, one objector, namely, Damodar Chaini, petitioner in the writ petition i.e. W.P.(C) No.17476 of 2009 filed a detailed objection which would be dealt with separately. But, it is important to take note herein that the said objector did, in fact, participate at the hearing. Out of the 62 objectors, 47 attended the hearing and the 15 who did not participate at the hearing, sought for adjournment on the ground of non-availability of the lawyer on the said date. After conclusion of the hearing, the records of the proceedings were duly sent to the State Government along with the report of the Collector, Cuttack. The report of the Collector as well as the objections filed by the land losers and objectors were duly considered by the State Government and before acquisition of land, the State Government carried out a "socio-economic survey" in view of the direction issued by this Court vide its order dated 27.11.2008 passed in W.P.(C) No.16822 of 2008. The report of the Collector after conclusion of the hearing under Section 5-A is extracted herein below:

> "XXX Since 5-A hearing is a quasi judicial and quasi administrative proceeding where a report is require to be submitted to the Govt. for final decision, Individual notices were issued to the petitioners, but time petitions were not considered keeping in view the time stipulation provided in the Act. For each stage of operation and individual grievance already submitted in writing in their respective petitions filed.
> Bereft of details of Individual claim, claims of petitioners/Land Owners in general are as under.

1. Land in the Area are fertile.
2. Petitioners have no occupation other than agriculture.
3. The compensation amount decided in L.A. proceeding being inadequate, higher compensation may be paid.
4. They will become Land less, if acquisition of their land is made.
5. As their lands are to be acquired, they are to be declared as displaced.
6. Adequate rehabilitation and employment be provided to land owners affected by land acquisition.

The petitioners/land owners present in the hearing were heard individually with reference to their individual petitions. Perusal of the petitions filed U/s. 5-A and time petitions filed by some land owners revealed that all most all are computer generated applications with identical claims containing signatures of petitioners/Land owners at the bottom. However, the individual objection co-relating land acquisition in all the villages appear to have one tenor in its spirit. The objections filed appear to have its genesis more in apprehension and public rumor that in reality. In any land acquisition, for any purpose common apprehension expressed by the petitioners are but obvious, as the rural agricultural land owners are going to lose their ancestral land during acquisition. However, R. & R. Policy, 2006 which is said to be the best R & R Policy, in the country can redress the grievances of the petitioners/land owners through its meaningful implementation.

Miss Madhuri Mishra present on behalf of the IDCO, the Requisitioning Authority, opined that the individual grievance of the land owners/petitioners will be addressed to under the relevant provisions of R & R POolicy, 2006 co-relating issues on compensation, displacement, rehabilitation and employment etc.

**Video C.D. of entire proceeding is attached herewith for reference**.

APPROVED
COLLECTOR, CUTTACK"

***8.*** Thereafter, the State Government issued declaration under Section 6(1) of the Land Acquisition Act, 1894 on 21.07.2009 published for all the concerned villages and a sample copy of the Odisha Gazette on 30th July, 2009 is quoted hereunder:

"**ORISSA GAZETTEE**
EXTRAORDINARY
PUBLISHED BY AUTHORITY

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No.1102 CUTTACK SATURDAY July 30, 2009/SRAVANA 8,1931

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REVENUE & DISASTER MANAGEMENT DEPARTMENT
NOTIFICATION
DATE 21ST JULY 2009

No.28793-LA (A)-51/2008-Cuttack-RDM-Govt. of Orissa being satisfied that acquisition of land in village Rahangole P.S: Gurudijhatia, Tahesil Athagarh, District Cuttack is required to be made immediately for establishment of Industry by IDCO for the public interest at the expense of the Govt., it is therefore declared that land measuring 87.020 Acres in the above village is required to be acquired for the above the purpose.

This declaration as per provision under Section 6(1) of the Land Acquisition (Amendment) Act, 1984 is published for the information of all concerned.

The land schedules published under Section 4(1) Notification No.29794 dt.11.07.2008 and Orissa Gazette No.1461 dt.2.08.2008 after the following modification are hereby covered under the above Declaration.

A map showing the above land will be available for inspection during office hours in the office of the Land Acquisition Collector, Cuttack.

Land Schedule is attached herewith

**By the Order of the Governor,**
**Utshabananda Behera,**
**Joint Secretary"**

***9.*** In the aforesaid factual backdrop, it would be appropriate to extract hereunder in a tabular form, the extent of land covered by the project and the extent of land i.e. covered by the present challenge in the batch of writ application which is quoted hereunder:

**LAND STATUS OF KVK NILACHAL POWER PVT. LTD.**

| Total land requirement | Private Land | | | | Govt. Land | | |
|---|---|---|---|---|---|---|---|
| | Land purchased by company directly by negotiation | Land Notified u/s 6(1) of L.A. Act 1894 | | Total | Lease Sanctioned in favour of IDCO by Collector | Lease to be sanctioned in favour of IDCO by Collector | Total Govt. Land |
| | | Area covered under writ petition | Area not under challenge | | | | |
| A+B | | | | A | | | B |
| 834.558 | 260.260 | 106.603* | 174.097 | 540.960 | 188.720 | 104.878** | 293.598 |

From the aforesaid table, it would be clear that whereas the land covered under Section 4(1) notification dated 11.07.2008 in the four villages was a total of 540 Acres, the land covered under Section 6(1) notification dated 21.08.2009 was reduced to 280.7 Acres. The total number of awardees in the four villages were 326 persons and from amongst them 264 persons owning 174.09 acres, have received their compensation/disbursement and have chosen not to challenge the land acquisition proceeding before this Court.

From amongst the land losers, the petitioners who have challenged the acquisition in various writ applications in this batch are 18 in number and hold 106.03 acres of land and during pendency of this writ petition, a total number of 19 petitioners owning about 15.844 acres have also received their compensation. Therefore, effectively the number of aggrieved persons is now limited to 61 persons holding a total area of 90.759 acres.

***10.*** In the aforesaid factual backdrop, we will now record the submissions of the parties.

**Category-I- Challenge to Land Acquisition Proceedings**

***11.*** The petitioners have raised the contention that the State Government should have acquired the land under Part-VII and not part-II of the Land Acquisition Act, 1894 and acquiring the land under Part-II amounts to a "colourable exercise of power" by the State Government for the benefit of a private party namely KVK.

***12.*** A further issue raised by the petitioners in this batch of writ petitions was that the Collector forwarded his report but, without assigning any detailed reason for each individual case as required under Section 5-A of the Land Acquisition Act, which grossly violates the rights of the petitioners and, therefore, defeats the independent application of mind by the State and consequently vitiates the entire proceeding. It is further submitted that Section 6 notification under the Land Acquisition Act dated 21.07.2009 published in the Odisha

Gazette on 30th July, 2009 being beyond one year from the date of issue of notification under Section4(1) of the L.A Act which is said to have been issued on 17.07.2008 rendered the same *ab initio*, illegal and void. The petitioners place reliance on the following citations:-

1. **Girnar Traders(3)v.State of Maharashtra,**(2011)3 SCC 1.
2. **Dev Sharan v. State of U.P,** (2011) 4 SCC 769.
3. **Radhy Shyam v. State of U.P.,** (2011) 5 SCC 553.
4. **Tukaram Kana Joshi v. MIDC,** (2013) 1 SCC 353.
5. **Kamal Trading v. State of W.B,** (2012) 2 SCC 25.
6. **B.Anjanappa v. Vyalikaval Housing,**(2012)10 SCC 184.
7. **Rajiv Pujahari v. State of Orissa,** 2010(II)ILR Cutt 1008

***13.*** The essential contention is that Section 3(f) of the L.A. Act expressly excludes "acquisition for companies" from the definition of "public purpose". The definition of public purpose was amended in the year 1984 to specifically exclude companies. In this respect, it would be essential to take note of Section 3(f) of the Land Acquisition Act, 1894 as it existed prior to the 1984 amendment, as well as, post 1984 amendment.

**Pre 1984 Amendment**

> "(f) the expression "public purpose" includes the provision of village-sites in districts in which the (appropriate Government) shall have declared by notification in the Official Gazette that it is customary for the Government to make such provision; and"

**Post Amendment**

"(f) the expression "public Purpose' includes-

(i) the provision of village-sites, or the extension planned development or improvement of existing village-site;

(ii) the provision of land for town or rural planning;

(iii) the provision of land for planned development of land from public funds in pursuance of any scheme or policy of Government and subsequent disposal thereof in whole or in part by lease, assignment or outright sale with the object of securing further development as planned;

(iv) the provision of land for a corporation owned or controlled by the State;

(v) the provision of land for residential purposes to the poor or landless or to persons residing in areas affected by natural calamities, or to persons displaced or affected by reason of the implementation of any scheme undertaken by Government, any local authority or a corporation owned or controlled by the State;

(vi) the provision of land for carrying out any educational, housing, health or slum clearance scheme sponsored by 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;

(vii) the provision of land for any other scheme of development sponsored by Government, or, with the prior

approval of the appropriate Government, by a local authority;

(viii) the provision of any premises or building for locating a public office, but does not include acquisition of land for Companies;"

***14.*** The facts that have been highlighted by the petitioner in support of their aforesaid contentions is that KVK had on its own selected site and made a request to the Government of Odisha, IPICOL and IDCO requesting the said land be acquired and administrative approval for acquisition was granted for KVK alone. Therefore, the administrative approval being the foundation of all subsequent steps taken in the acquisition of land by the Government, the acquisition was for a specific company at its cost and, therefore, such acquisition for a company cannot come within the definition of public purpose under section 3(f) of the Land Acquisition Act (As amended in 1984) since, from the date of the 1984 amendment, acquisition for "companies" is expressly barred from the scope of "public purpose".

***15.*** The next contention raised by the petitioner in this respect is that IDCO, a creature of the State Legislature and corporation of the State is bound by the statute i.e. IDCO Act **and Rules thereunder and** acquisition can only be made by IDCO for the purpose of setting up and "industrial area" which is declared to be industrial area by the State Government by notification. It is alleged that no such notification has been issued by the Government of Odisha declaring

the acquired area as an industrial area and, therefore, IDCO was not competent to seek such acquisition under its authority of law and further that the acquisition of land on the basis of requisition made by the IDCO is merely a cloak to give benefit of part-II of the Land Acquisition Act to a private company for which it is not otherwise entitled. In this respect reliance is placed on the following judgments:

1. **Greater Noida v. Devendra Kumar,** (2011)12 SCC 375
2. **Royal Orchid Hotels v. G.Jayarama Reddy,**(2011)10 SCC 608
3. **State of Tamil Nadu v. K.Shyam Sunder,**(2011)8SCC 737
4. **Coal India v. Ananta Saha,** (2011) 5 SCC 142
5. **Nishakar Khatua v. State of Orissa & Ors.,**(2012)I ILR Cutt.19
6. **Rajiv Pujari v. State of Orissa & Ors.,** 2010(II)ILR Cutt. 1008
7. **Centre for PIL v. U.O.I,** (2012) 3 SCC 1
8. **Devinder Singh v. State of Punjab,** (2008) 1 SCC 728
9. **Surinder Singh Brar v. Union of India,** (2013) 1 SCC 403.

**Submissions of learned Advocate General**

***16.*** It is submitted by the learned Advocate General that the State is committed to encouraging the Private Sectors to set up Power Plant for meeting the needs of the State Industrial Sector and for domestic consumption. Therefore, acquisition for such purpose satisfies the requirements of the definition under Section 3 (f) of the Land Acquisition Act i.e. “public purpose”. It is asserted that the term “public purpose” is an “inclusive definition” and setting up of a thermal power plant by a private entrepreneur, definitely comes within the definition of Section 3 (f) of the Land Acquisition Act. It is further submitted that the acquisition in the present case has been made for

and on behalf of IDCO, a Government of Orissa Statutory Corporation. Therefore, under Section 3 (f) (iv) of the Land Acquisition Act acquiring land for the purpose of a Corporation owned or controlled by the State is sufficient for the applicability of Section 3 (f) of the Land Acquisition Act. On a perusal of the notification made under Sections 4(1) and 6(1) of the Land Acquisition Act and the said declaration it would be clear that the entire land acquisition proceedings falls under Part II of the Land Acquisition Act and not Part-VII of the Land Acquisition Act as alleged by the petitioners.

It is further highlighted by the Advocate General that the MOU entered into between the State of Orissa and KVK contains various salient features which are in the interest of the State and its people at large. Setting up of a thermal power plant would be beneficial to the State which is power deficient. In this regard, learned Advocate General has placed reliance on certain clauses of the MoU, which are quoted herein below:

> "1(i) Power generated in excess of 80% Plant Load Factor (PLF) from the Thermal Power Plant will be made available to the State by KNPL at variable cost plus incentive (the incentive would be as fixed by Central Electricity Regulatory Commission).
> (iii) A nominated agency(s) authorized by Government will have the right to purchase up to 25% of power sent out from the Thermal Power Plant(s) excluding the quantum of power indicated at item (i) & (ii) under terms of Power Purchase Agreement to be mutually agreed upon on the basis of existing laws and regulations in force and the tariff for such power

purchase will be determined by the appropriate Regulatory Commission."

***17.*** It is further submitted on behalf of the State that the allegation that the KVK has paid the cost of the land, is wholly false and incorrect. Reference is made to Section-20 of the Industrial Infrastructure Developments Corporation Act, 1980 (IDCO Act), which is as follows:

> "20. **Corporation's fund**- The Corporation shall have and maintain its own fund, to which shall be credited-
> (a) all amounts received by the Corporation from the State Government by way of grants, subventions, loans, advances or otherwise;
>
> (b) all fees, costs and charges received by the Corporation under this Act;
>
> (c) all amounts received by the Corporation from the disposal of lands, buildings and other properties movable and immovable and other transactions;
>
> (d) all amounts received by the Corporation by way of rents and profits or in any other manner or from any other source;
>
> (e) all amounts received by the Corporation from Government undertakings, companies, Financial Institutions, Commercial Banks or from any other source."

***18.*** Therefore, the learned Advocate General submits once payment is made by the KVK to the IDCO, such payments made by KVK get merged with IDCO's fund and consequently becomes part of the Corporation's fund. Therefore, any money paid to the Government

by IDCO for the land acquisition comes only from the funds of the Corporation. Reliance was also placed on Section 6(1)(ii) Explanation-2 of the Land Acquisition Act, which is quoted hereunder:

> "**Section-6(1)(ii) Explanation-2** of the Land Acquisition Act provides that "where the compensation to be awarded for such property is to be paid out of the funds of a Corporation owned or controlled by the State, such compensation shall be deemed to be compensation paid out of public revenues."

***19.*** Therefore, it is submitted that the IDCO being a State Corporation, the funds of IDCO is a "public fund" and consequently since no payment has been received by the State Government from the KVK and payments instead have only been received from IDCO, therefore, Part-VII of the Land Acquisition Act has no application and there is no violation of the condition imposed under Part-II. It is further submitted that the acquisition of land for IDCO under Para-II of the Land Acquisition Act and lease thereof to KVK thereafter, is fully justified in the facts and circumstances of the present case and there in fact is "no colourable exercise of power". In this context, reliance is placed on the judgment of the Hon'ble Supreme Court i.e. **(i) (2003) 10 SCC 626-Pratibha Nema and (ii) (2010) 10 SCC 282-Nand Kishore Gupta**.

It is further submitted that the term "public purpose" as defined in Section 3(f) of the Land Acquisition Act has to be interpreted as an "inclusive definition" and has to be given the widest meaning.

Reliance is also placed on the judgment of the Hon'ble Supreme Court in the case of **Sooraram Pratap Reddy**, (2008) 9 SCC 552.

***20.*** Insofar as the date of publication of Section 4(1) notification is concerned, the State have filed additional counter affidavit on 08.04.2013 annexing as Annexure-J/3 indicating Sections 4(1) and 6(1) Notification of various revenue villages which is quoted hereinbelow:

**Date wise information on 4(1), 6(1) & order u/s.7 Notifications for acquisition of land in Village-Dalua, Rahangol, Kandarei & Khanduali for IDCO**

| **Name of village** | **Area** | **Withdrawal** | **Balance area for acquisition** | **4(1) Notification No. & Dt.** | **Date of validation of 4(1) Notification** | | | **6(1) Declaration No. & Dt.** | **Date of validation of 6(1) Declaration** | | | **Orders u/s.7 No. & Dt.** |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| 1 | 2 | 3 | 4 | 6 | 5 | | | 8 | 7 | | | |
| **Dalua** | 63.930 | 22.230 | 41.700 | 29807/ 11.07.08 | Paper Publication Dt. | Public Notice Dt. | Gazette Publication no.& dt. | 28800/ 21.07.09 | Paper Publication Dt. | Public Notice Dt. | Gazette Publication no.& dt. | 16267/ 23.4.10 |
| | | | | | 28.7.08 | 19.7.08 | 1463/ 2.8.08 | | 02.8.09 | 28.7.09 | 1101/ 30.7.09 | |
| **Rahangol** | 254.821 | 167.801 | 87.020 | 29794/ 11.7.08 | 04.8.08 | 18.7.08 | 1461/ 2.8.08 | 28793/ 21.7.09 | 02.8.09 | 28.7.09 | 1102/ 30.7.09 | 16279/ 23.4.10 |
| **Kandarei** | 114.440 | 26.810 | 87.630 | 29800/ 11.7.08 | 28.7.08 | 19.7.08 | 1462/ 2.8.08 | 28779/ 23.4.09 | 2.8.09 | 28.7.09 | 1101/ 30.7.09 | 13271/ 23.4.10 |
| **Khanduali** | 107.770 | 43.420 | 64.350 | 29813/ 11.7.08 | 28.7.08 | 18.7.08 | 1464/ 2.8.08 | 28786/ 21.7.09 | 2.8.09 | 28.7.09 | 1102/ 30.7.09 | 16275/ 23.4.10 |
| **Total** | **540.961** | **260.261** | **280.700** | | | | | | | | | |

Therefore, the contention of the petitioners that Section 6 declarations under the Land Acquisition Act was not within one year, is wholly incorrect.

***21.*** Learned Advocate General further contends that the Collector, who carried out hearing of the objections submitted under

Section 5-A of the Land Acquisition Act, submitted his report to the State. Since the persons who had sought adjournment and were denied had submitted identical objections having no distinguishing features from the objections raised by the 45 persons, who have been heard. Since all the objections were submitted were identical in nature, having no distinguishing features, no prejudice can be said to have been caused to those persons whose adjournment applications came to be rejected.

Learned Advocate General further submitted that further allegation that adequate opportunity had not been given to the objectors under Section 5-A, is wholly without substance and even before the acquisition of the land, a "socio-economic survey" was carried out in compliance to this Court's order dated 27.11.2008 passed in W.P.(C) No.16822 of 2008, the relevant portion of which is quoted herein below:

> "Without going into the merit of the case one way or other, we dispose of the writ petition with a direction to the petitioners to move a representation before the appropriate concerned authority to ventilate their grievances which shall be considered and disposed of as expeditiously as possible preferably within a period of two months from the date of filing of the said representation along with a certified copy of this order and copy of the writ petition."

***22.*** Pursuant to the aforesaid direction, the Revenue Divisional Commissioner (Central) granted personal hearing to the land oustees

on 25.11.2010. The issues raised in the present batch of writ application relate directly to the acquisition of land and the same allegations regarding violation of Forest and Environment, Topography and Cropping pattern, flora and fauna habitat and Socio Economic Issues had been raised. The RDC's report clearly indicates as follows:

> **"Enquiry report of Sri P.K. Mohapatra, I.A.S., Revenue Divisional Commissioner, Central Division, Cuttack into the representation of Charidesha Krushak Surakhya Sangha of Kanderai G.P., under Athagarh Tahasil.**
>
> **-------**
>
> Pursuant to Government in Revenue & D.M. Department Letter No.47518, dt.19.11.2010, the undersigned initiated an enquiry into the representation of Charidesha Krushak Surakhya Sangha of Kanderai G.P., in connection with the issues such as not to notify Agricultural land, Forest land etc. of Kanderai G.P. of Athagarh Tahasil and Athagarh Sub-Division for the purpose of Industrial development.
>
> The date was fixed to 25.11.2010 at 11 A.M. for enquiry. All the petitioners of the representation were served notices to attend the said enquiry. The enquiry comprised an open public hearing followed by spot visit and examination of official records. The public hearing was held in the Gram Panchayat Office at Kanderai, in presence of representatives of Charidesha Krushak Surakhya Sangha, Kanderai G.P., Collector, Cuttack, S.P., Cuttack, D.F.O., Athagarh, Executive Engineer, Drainage Division, Cuttack, Sub-Collector, Athagarh, other Government Officials, Managing Director and other officials of the Company and the Sarapanch of Kanderai G.P. Over and above these, the public hearing was also attended by a vast majority of the villagers of the Kanderai G.P.
>
> **The process of enquiry was video recorded to ensure fairness and transparency.**
>
> For the purpose of enquiry the prima contentions and concerns of the petitioners are broadly categorized into the following.

A) Land Matter,
B) Forest and Environment,
C) Topography and Cropping Pattern
D) Socio-economic issues.

**Land Matters**

The genesis of the land matter arises from a Writ petition filed in W.P.(C) 16822/08 before the Hon'ble High Court of Odisha, seeking a direction to the State Government in Revenue & D.M. Department not to give protection U/s.73(c) of OLR Act in favour of KVK Nilachal Power, as well as a direction to both Sub-Collector and Tahasildar, Athagarh to initiate proceedings against the said company under the relevant provisions of the OLR Act. The Hon'ble High Court of Odisha was pleased to dispose of the writ petition on 27.11.2008 with a direction to the petitioners to move a representation before the appropriate authority to ventilate the grievances.

In their representation the prime contention alludes to following:

That the company has purchased land directly from the farmers prior to the notification U/S 73(c) of OLR Act and violating the provisions of Sec.22 of the said Act.

**FOREST & ENVIRONMENT**

The petitioners also allege regarding acquisition and alienation of both Government and non-Government land which are Forest land. They contend that the project area is surrounded with forest land and especially by Reserved Forest. Further they have contended about the existence of an Elephant corridor.

It is further contended that the proposed Thermal Power Plant will affect the inhabitants living around with heat, ash, coal dust and other chemicals.

**Topography & Cropping Pattern**

The petitioners have alleged that the project site and its surrounding areas have perennial water sources which naturally irrigate agricultural land in Dalua, Kanderai and Rehangola villages. The representation also refers to 2 Lift Irrigation points inside the project site capable of irrigating more than 100 acres of land. The land also yields two crops a year and such land should not be acquired for industries.

**Socio-economic issues**

The petitioners emphasized that 62% of the population of Kandarai G.P. are ST/SC communities who will not only be deprived of their livelihood but also rendered landless.

During course of public hearing the representatives of Charidesh Krushak Suraskhya Sangha namely, President Sri Narayan Sahu and Secretary, Sri Narendra Mohapatra deposed before me in persoin. Besides one Dolagobinda Rana of Rahangola, Pramesh Chandra Moihapatra of Kandrei and Sudam Ch. Beura, Sarapanch of Kandarei G.P. also deposed before me. Besides the general opinuion of the villagers was taken about the project.

**FINDINGS**

**A. LAND MATTERS**

The main allegation in land matter is that the company has purchased land directly from farmers before the notification by Govt. u/s.73(c) of OLR Act and that the company has also purchased land from SC & ST persons in violation of Sec.22 of the said Act.

On perusal of records of Tahasil Office, it is found that the President of Charidesh Krushaka Sangha Sri Narayana Sahoo had filed a grievance before the Tahasildar, Athagarh toi execute the order of the Hon'ble High Court dated 27.11.2008 vide W.P.(C) No.16822 of 2008. The main concern of the grievance was initiation of ceiling case under chapter 4 of the O.L.R. Act, 1960 against M/s. K.V.K. Nilachala Power Pvt. Ltd., who has purchased private land directly before obtaining the permission under 73(C) of O.L.R. Act.

It was ascertained that the Company has purchased a total area of Ac.188.37 dec. of land without any statutory authority for which Rev. Misc. Case vide No.27/08-09 was initiated on 07.01.2009 after following the direction of the Hon'ble High Court in W.P.(C) 16822 of 2008.

Further on 16.12.2009 basing on the report of R.I.Khuntuni a ceiling case under O.L.R. Act. bearing No.1/2009 was initiated, as the entire area owned by the authorized officer M/s. K.V.K. Power Pvt. Ltd. is more than 10 standard acre. The authorized Officer of the company was directed to file return in

Form No.12 u/s.40(A) of O.L.R. Act. Subsequently a W.P.(C) bearing No.19908 of 2009 has been filed by the company and interim stay was granted by the Hon'ble High Court till 21.01.2010. Further in Misc. Case No.17266 of 2009 on dated 04.02.2010, Hon'ble High Court has suspended the notice dated 16.12.2009 u/s.40(A) of O.L.R. Act of the Tahasildar till next date. Further progress in the OLR Case will depend on the disposal of the case pending on the Hon'ble High Court.

The next allegation is that the company has violated Section 22 of Orissa Land Reforms Act (OLR Act) where by it has purchased land directly from SC & ST persons without obtaining permission from the competent authority. On verification of the records and report of the Sub-Collector, it is ascertained that the company has not executed a single sale deed in the Sub-registrar's Office regarding purchase of land by the company from any SC & ST persons directly. However, the company has entered in to an agreement with 3 farmers belonging to SC & ST community for purchase of 4.92 Ac. Land but no sale deed has been executed. Hence Section 22 of OLR Act has not been violated.

It is further ascertained that the Government of Odisha in Revenue & D.M. Department have issued notification under 4(1) of the L.A.Act, on 11.7.08. In respect of Khanduali, Rahanagol, Kandarei and Dalua villages. Consequently 62 nos. of objections, including 8 petitioners, were filed under Section 5-'A' of the said Act. The entire hearing by the Collector, Cuttack has been video recorded and submitted along with the proceedings to the Government in Rev. & D.M.Department, Thereafter, declaration U/S6(1) of LA Act have been notified by the Government in respect of these 4 villages. The present land acquisition process is being carried on in accordance with law except for the land which the company has directly purchased.

**B. FOREST & ENVIRONMENT**

The petitioners have alleged that the company have proposed to acquire 207.69 Ac. of non-Govt. forest land and 192.90 Ac of forest land. The DFO, Athagarh who was present during the inquiry informed that the Project is not a part of the Reserve Forest. This has been de-notified vide Government of

Orissa Notification No.16282-'D' dt.30.10.1953. The land classified as Gramya Jungle comes to only 125.85 Ac. For which the requisitioning authority has submitted proposal for forest diversion.

Further there is no Elephant corridor inside the project area. The nearest Elephant corridor has been identified near Dabagadia which is about 5.5 kms from the project area.

As regards concerns of the petitioners regarding pollution and possible impact of the project on the environment, M/s.KVK Nilachal Power Pvt. Ltd has already been given Environment clearance by the Ministry of Environment and Forest vide their letter No.J-13011/51/08-1A II(T) dt.18.2.09.

**C. <u>Topography & Cropping Pattern</u>**

The petitioners have alleged that the project area and its surrounding area have a perennial water source which naturally irrigate agricultural land in Dalua, Kanderi and Rahangola villages, It is a fact that the Barajora Nala drainage system passes through the proposed plant site and the existing drain runs through flat terrain without embankments on any side. The Company i.e. KVK Nilachal Power Pvt. Ltd. has submitted a proposal to the E.E., Drainage Division, Cuttack to divert the drain outside, adjoining the boundary of the acquired area. The company has agreed to pay the direct and indirect expenses to be incurred for its construction, maintenance and monitoring of the system, along with any land acquisition further required for the purpose.

There were two LI points in the project area. The villagers informed that since people are not taking any interest in agriculture, the two LI points have been defunct and damaged. The petitioners have alleged that the area produces two crops and it is a irrigated area. It is ascertained from the revenue records that this is a rain-fed area and there is no regular irrigation source other than two defunct LI points. Generally, farmers grow paddy during Khariff season and vegetable in Rabi season. It is not an Irrigated area. Since the drain will not be affected by the company as it will be properly relocated, the farmers will not be affected from the Irrigation benefit they derive from this drain.

**D. <u>Socio-economic Issues</u>**

The petitioners have alleged that this Panchayat has 62% of the population belonging to SC & ST. However, as per 2001 census figures the total number of SC population inhabiting in the 4 villages notified for the company by the Government in Revenue & D.M. Department is 9.6% only and the S.T. population 38.8%. Adequate compensation under the provisions of Rehabilitation and Resettlement Policy 2006 of Govt. of Odisha will address such grievances and also augment their general standard of living through employment generation.

Out of the total project area of 975.00 Ac, the SC & ST population only occupy 120 Ac. of land. All these people who will be losing land would be getting permanent jobs in the company as per the Rehabilitation & Resettlement Police, 2006 of Government of Orissa. Under this policy, the Rehabilitation & Periphery Development Advisory Committee will be constituted which shall look into all local needs of the villagers including roads, communication, health, education etc.

During my inquiry, a large number of villagers including the Sarapanch and the representatives of Charidesha Krushak Sangha were present. The Charidesha Krushak Sangha is an Organization registered in 2009 although the company has started its activities in 2008. Although the Charidesha Krushak Sangha is agitating for some good causes, they have very few supporters. The genuine concerns expressed by them are being adequately taken care of, but some concerns are without basis. Almost all the villagers present during my inquiry supported the project as it will improve the socio-economic condition and provide employment to the local people. Since, in Orissa we have R & R Police, 2006 under which RPDAC is functioning, local needs can easily be addressed.

Sd/
Revenue Divisional Commissioner,
Central Division, Cuttack."

***23.*** The Learned Advocate General placed reliance on the "Industrial Policy Resolution of the State of Orissa, 2007" and the definition of the term "Infrastructure Project" as found in Annexure-1 thereof at Clause-10, which is quoted hereunder:

> "10. "Infrastructure Project" means roads, bridges & culverts, railway lines, power plants, electric substations and transmission lines, coal storage, water supply and storage facilities undertaken predominantly for use by industrial units, ports, airports, container terminals, bonded warehouses, satellite townships around industrial centers, film cities, film studios, transport and telecommunication facilities, common effluent treatment plants, waste management facilities, tool rooms, R & D Institutes, Technology Laboratories/ Centers, Quality testing labs/centers, exhibition and conference centers, industrial townships, industrial estates, amusement parks, Multiplexes, Golf courses and other tourism-related infrastructure, social and allied infrastructure such as schools, technical & professional institutes and hospitals etc."

Further reliance was placed on Clauses-1.6, 9, 9.1, 9.3, 16, 16.3 & 16.6 of the Industrial Policy Resolution, 2007, which are quoted hereunder:

> "**1.6** Orissa has also emerged as a national hub for thermal power with a proposed capacity installation of over 20,000 MW in the medium term involving an investment of over Rs.80,000 crore. The State is therefore poised to leverage the availability of low cost and reliable power to attract further investments.
>
> **9. INFRASTRUCTURE**
>
> **9.1** The State Government recognizes the need of providing quality industrial and social infrastructure for supporting healthy industrialization as also the need for industry to follow environment friendly practices to make the industrialization process sustainable.

**9.3** The State Government shall announce a comprehensive Land Police to address all issues concerning identification, procurement and allotment of land for industrial and allied purposes, including creation of associated social infrastructure. IDCO along with Revenue Department shall vigorously implement the land Bank Scheme, which was announced in the IPR-2001 to ensure orderly industrial growth. IDCO in association with DLNAs shall identity suitable tracts of government land for this purpose, which shall then be considered by the DLSWCA for alienation in favour of IDCO. The land premium shall be paid by IDCO after a moratorium of three years from the date of alienation. The moratorium period should be utilized by IDCO for development of the land for industrial and allied use. In the event of non-payment of premium within the stipulated period the land shall be liable for resumption.

**16. LAND**

**16.3** Infrastructure Projects and project of IDCO for industrial and infrastructure use shall be entitled to allotment of Government land at concessional industrial rate.

**16.6** New Industrial units and existing industrial units taking up expansion/modernization/diversification will be granted exemption under the provisions of clause-C of Section-73 of Orissa Land Reforms Act, 1960 from payment of premium, leviable under provisions of clause-C of Section 8(A) of the OLR Act, 1960 on production of eligibility certificate from the Director of Industries, Orissa for Large Industries and Medium enterprises and G.M./PM, DIC for Micro, Small Enterprises as follows.

| | |
|---|---|
| Micro & Small Sector | 100% up to 5 Acres |
| Medium Sector | 75% up to 25 Acres |
| Large Sector | 50% up to 500 Acres |
| Priority Sector | 50% |
| Thrust Sector | 100%” |

***24.*** Placing reliance on the above and, in particular, that the State in its Industrial Policy Resolution has declared "power plant", as "infrastructure project", there can be no doubt whatsoever that setting up of a power plant sub-serves "public purpose" and clearly the acquisition of land for an "infrastructure project" i.e. production of power by KVK cannot but be held to be covered by Section 3(f) of the Land Acquisition Act. Consequently, acquisition under Part-II of the Land Acquisition Act cannot be faulted.

The Learned Advocate General further stated that the State only provides the land for "public purpose" through IDCO and whether the KVK purchased additional land on its own is not a criteria to be taken into consideration while challenging the act of acquisition of land under the Land Acquisition Act.

**Submissions of IDCO**

***25.*** Mr. Jagannath Patnaik, learned Senior Advocate appearing for the IDCO confined his argument to the cases under category-I relating to the validity and legality of the land acquired under the Land Acquisition Act, 1894. He submitted that the Orissa Industrial Infrastructure Development Corporation Act, 1980 was set up by the State of Orissa and is guided by the both Act, 1980 and rules framed thereunder.

The Corporation was established for development of Industrial Infrastructure in the State of Orissa. The State of Orissa entered into an MoU with various companies including KVK and the

State Government directed IDCO to develop the infrastructure for establishment of industries in the State serving public interest and more importantly, to support the industries establishing Power Plants which would be then required to sell part of power production to the State Government. Since KVK wanted to establish a coal based power plant in the State of Orissa, the said company applied to the State Government and the State Government forwarded the application to the High Level Clearance Committee constituted under Section 3 of the Orissa Industries (Facilitation) Act, 2004. The said High Level Industries Clearance Authority cleared the proposal of the company and directed administrative department to do the needful for establishment of the power plant. In view of the MoU entered into between the State and KVK and in view of the fact that certain clauses of MoU required KVK to supply a portion of the power generated by its plant to the State. The said terms of the MoU and the State being requirements of power directed IDCO to take necessary steps in the matter. Mr. Patnaik placed reliance Section 31 of the IDCO Act, 1980, which reads as follows:

> **"31. Acquisition of land: (1)** Whenever any land is required, by the Corporation for any purpose in furtherance of the objects of this Act, but the Corporation is unable to acquire it by agreement, the State government may, upon an application of the Corporation in that behalf, order proceedings to be taken under the Land Acquisition Act, 1894 (1 of 1894) for acquiring the same on behalf of the Corporation as if such lands were needed for a public purpose within the meaning of that Act.
> **(2)** The amount of compensation awarded and all other charges incurred in the acquisition of any such land shall be forthwith paid by the Corporation and thereupon, the land shall vest in the Corporation.**"**

***26.*** In terms of the aforesaid provisions the IDCO placed a requisition before the State Government for acquisition of certain amount of private land under the Land Acquisition Act, 1894 for the purpose of carrying forward its object, a certain amount of private land was covered under the notification and necessary notification under

Section 4 and 6 of the L.A. Act was duly issued and the same being subject matter of challenge in this batch of writ applications. Insofar as the allegation of "colorable exercise of power" is concerned, Mr. Patnaik submitted that in the present case after notification under Section 4 the objections duly considered under Section 5-A hearing conducted by the Collector and based on such report Section 6-A of the L.A. Act has been issued. It is submitted that Section 6-A of the L.A. Act provides for a declaration to be made by the Government that a particular land is made for a "public purpose" or for a company. It is for a company then such declaration shall be subject to the provisions of Part-VII of the Act which provides under the heading "Acquisition of land for Companies". Thus, Section 6 of L.A. Act makes an apparent distinction between acquisition of a land for a "public purpose" and acquisition for a company. He further submitted that there is an important and crucial second proviso to Section 6 of the L.A. Act which has a immense bearing on the issues raised by the petitioners on the question whether the acquisition is for a "public purpose" or for a company. In this respect, he placed reliance on Section-6 (Second Proviso) read with Explanation-2, which is quoted hereunder:

> "**Second Proviso of Section-6.**
>
> "..... no such declaration shall be made unless the compensation to be awarded for such property is to be paid by a company, or wholly or partly out of public revenues or some fund controlled or managed by a local authority."

> Explanation 2 to the proviso has made it clear that where compensation to be awarded is to be paid out of the funds of a Corporation owned or controlled by the State, such compensation shall be deemed to be compensation paid out of public revenues."

***27.*** Thus payment of compensation wholly or partly out of public revenues is mandatory for making a declaration to the effect that the particular land is needed for public purpose. In the present case declaration has been made under Section 6 that the land is needed for public purpose.

***28.*** Learned counsel for the IDCO asserts that in the present case, since the entire compensation amount was paid for by IDCO, it has to be "deemed" that it is out of "public revenue" and, therefore, the State issued the necessary declaration, that the particular land was needed for "public purpose". In the present case, since a declaration has been made under Section 6, that the land is needed for "public purpose", no challenge to the same on the purported ground of "colorable exercise of power" can be entertained.

Insofar as certain advances made by KVK to IDCO is concerned, it is submitted that the corporation has paid the administrative charges for the acquisition of land in question and has also deposited the necessary compensation amount for the said acquisition. In this respect, reliance was placed by Mr. Patnaik on the judgment of the Hon'ble Supreme Court in the case of **Smt.**

**Somawanti and others vs. State of Punjab and others**, AIR 1963 SC 151, which was quoted with approval in the case of **Pratibha Nema vs. State of Madhya Pradesh**, (2003) 10 SCC 626 and the case of **Sooraram Pratap Reddy and others vs. District Collector, Ranga Reddy District and others**, (2008) 9 SCC 552. He submitted that in the last judgment, the Hon'ble apex Court while interpreting the effect of Explanation-2 of the Second proviso to Section 6 of the L.A. Act, once even a part of the compensation amount is paid for acquisition from the fund of the State Corporation, the acquisition becomes for "public purpose" and satisfies the definition of Section 3(f) of the Land Acquisition Act. Therefore, he submits that no contention would survive that Part-VII and not Part-II of the L.A. Act would be applicable to the present case. Learned counsel for the IDCO further submitted that while it is a fact that the KVK has advanced certain money to IDCO towards advance lease premium, the same was credited to the account of the Corporation and once such money is from became part of the corporation's fund, it becomes the public fund and, therefore, payment for compensation having been paid from out of public fund satisfying the requirements of Explanation-2 under proviso-II of Section 6 of the Land Acquisition Act. Mr. Patnaik relies upon Section 14, 15(a) and Section 31 of the OIIDC Act and submits that IDCO is competent to acquire land for furtherance of the object of the said Act, which are quoted hereinbelow:

**"14. Functions-** The functions of the Corporation shall be.

(i) generally to promote and assist in the rapid and orderly establishment, growth and development of industries, trade and commerce in the State; and

(ii) in particular, and without prejudice to the generally of Clause (i) to;

(a) establish and manage industrial estates at places notified by the State Government,

(b) develop industrial areas notified by the State Government for the purpose and make them available for undertakings to establish themselves,

(c) undertake schemes or works, either jointly with other corporate bodies or institutions, or with government or local authorities, or on an agency basis, in furtherance of the purposes for which the Corporation is established and all matters connected therewith,

(d) provide or cause to be provided amenities and common facilities in industrial estates and industrial areas and construct and maintain or cause to be maintained works and buildings thereof,

(e) make available buildings on hire or sale to industrialists or persons intending to start industrial undertakings,

(f) construct buildings for the housing of the employees of such industries and employees of the Corporation.

**15. General Powers of the Corporation-** Subject to the provisions of this Act, the Corporation shall have power,

(a) to acquire and hold such property, both movable and immovable as the Corporation may deem necessary for the performance of any of its activities, and to lease, sell, exchange or otherwise transfer any property held by it on such conditions as may be deemed proper by the Corporation,

> **31. Acquisition of land: (1)** Whenever any land is required, by the Corporation for any purpose in furtherance of the objects of this Act, but the Corporation is unable to acquire it by agreement, the State government may, upon an application of the Corporation in that behalf, order proceedings to be taken under the Land Acquisition Act, 1894 (1 of 1894) for acquiring the same on behalf of the Corporation as if such lands were needed for a public purpose within the meaning of that Act.
>
> **(2)** The amount of compensation awarded and all other charges incurred in the acquisition of any such land shall be forthwith paid by the Corporation and thereupon, the land shall vest in the Corporation.**"**

***29.*** Mr. Patnaik laid stress on Section 14 of the OIIDC Act and submits that Section 4(ii) thereof, in particular, begins with the words "in particular and without prejudice to the generality of clause (i)". Therefore, he submits that all the instances cited in Section 14(ii) ought to be treated as merely illustrative without in any manner limiting the scope of sub-clause (i). In this respect, he placed reliance on the judgment of the Hon'ble Supreme Court in the case of **S.K. Singh vs. V.V. Giri**, AIR 1970 SC 2097 (Para-39, 41) in particular, wherein the Hon'ble apex Court came to hold that where such a phrase is used in Section 14(ii) is concerned, it has been held that the first part of the section is independent and is no way narrowed down by the illustrations given in the second part of the said Section. Therefore, he submits that the IDCO invoked its authority under Section 31 of the OIIDC Act only after the State Government was duly satisfied that the Corporation was unable to acquire the land by

agreement and, therefore, it became necessary for to the Corporation file a requisition for initiating process of land acquisition under the L.A. Act, 1894. The act of making such a "requisition" itself, presupposes that the Corporation having failed to acquire the land in question by agreement has had to resort to seeking acquisition under the L.A. Act, 1894 and such Act on the part of the Corporation cannot be held to be illegal or invalid or done in a manner which can be described to be a "colorable exercise of power". He further submitted that apart from the action of the IDCO under its statutory power, the State Government issued Notification under Section 4 of the Land Acquisition Act, which once again declares that the land in question is required for establishment of industrial area by IDCO and, therefore, there was no necessity of issuing any second notification notifying an industrial area. In conclusion, it is submitted that the land in question was acquired by IDCO under the Land Acquisition Act, 1894 for "public purpose" for leasing the same to KVK for setting up of a thermal power plant, which is declared to be an "infrastructure project" under the IPR, 2007 and in terms of the MoU entered into between the State and the KVK, the benefits of the plant would enure to the benefit of the people of the State which is being starved of power and consequently no allegation of "lack of public purpose" ought to be entertained. He submits that the land in question has been leased in favour of the KVK on various terms and conditions stipulates in the

lease agreement and no permanent interest for the land acquired has been transferred in favour of KVK and in the event of any violation of the terms of lease, it remains open to the IDCO to revoke the lease for breach of any terms and conditions. Consequently, it cannot be said that there has ever been any transfer of interest in the land in favour of the KVK, apart from what is contained in the lease deed and the title of such land continues to be vested in the State.

**Submissions of KVK**

***30.*** Mr. Pinaki Mishra, learned Senior Advocate appearing for the KVK submits that the contentions of the petitioners pertaining to the alleged illegalities committed in acquiring the land under the L.A. Act are wholly, misconceived and baseless both in fact and law. It is submitted on behalf of the KVK that, the acquisition in the present case is clearly covered under Section 3(f)(iv) and Part-II of the L.A. Act. In terms of the notification issued under Sections 4 and 6 of the L.A. Act, the acquisition of land by the State Government is for IDCO, for setting up industry for public interest at the expense of Government. Such acquisition of land is squarely covered by the definition of "public purpose" under Section 3(f)(iv), Part-II of the L.A. Act namely the provisions of land for a corporation owned or controlled by the State Government.

The acquisition would result in vesting the acquired land with the Government and Government will become the owner of the

land and will give the same to IDCO on long term lease. In fact, the Govt. has already given possession of part of the acquired land to IDCO. IDCO in turn will sub-lease the land to the KVK for the purpose of setting up the Thermal Power Plant for a fixed tenure on payment of rent and premium, with onerous conditions including covenants for forfeiture.

It is submitted that the definition of "public purpose" u/s3(1)(f) of the LA Act is an "inclusive" one and has been given a very wide and broad meaning by the Hon'ble Supreme Court in various judgments. Therefore, the present acquisition, would be, in any event, covered under the definition of "public purpose" and would therefore fall under Part II of the LA Act.

It was further submitted that the land was required for setting up a 1200 MW Thermal Power Project by the KVK. Undisputedly, "Power Plant" is an "Infrastructure Activity", covered under the Industrial Policy Resolution issued by the State Government and is therefore, for the benefit of the people of the State.

The KVK has executed a Memorandum of Understanding ("MOU") dated 26.09.2007 (which is being renewed/extended annually) under which the Government has undertaken to provide land to the KVK.

Additionally the MOU dated 26.9.2006 in Clause (i) stipulates that power will be made available to state at cheaper rate i.e. only at 'variable cost' (which means non-recovery of 'fixed cost'). A preferential right is given under Clause (ii) to State to purchase 25% power. The KVK has executed a Power Purchase Agreement with Grid Corporation of Orissa, dated 26.09.2006, for supplying 25% power. The KVK has executed a Power Purchase Agreement with Grid Corporation of Orissa, dated 26.9.2006, for supplying 25% of power to be generated from the project at vastly concessional rates.

The MOU also stipulates that in the maters of employment preference will be given to people of Odisha and local people and the KVK will make efforts for improving the skill levels of such persons. This activity is being scrupulously pursued by the KVK.

The power project would generate numerous direct and indirect employment opportunities for the people of the State and is in the larger interest of the people and economy of the state.

In view of the above, it is asserted that setting up of the present power plant is for a public purpose and is clearly covered by the broad definition of "public purpose" under Section 3(I)(f) of the LA Act.

The KVK relies on the following judgments:-

(i) **Pratibha Nema and Ors. Vs. State of MP** – (2003) 10 SCC 626- Paras 31-33- List of judgments given by the Ld. AG) Establishment of Diamond Park by private parties was held to be public purpose.

(ii) **Sooraram Pratap Reddy Vs. District Collector, Ranga Reddy District** (2008) 9 SCC 552 – Paras 119, 133, 129 and 134 List of judgments given by the Ld. AG – Establishment of Software Park by private parties was held to be public purpose.

(iii) **Nand Kishore Gupta and Ors. Vs. State of Uttar Pradesh and Ors.** – (2010) 10 SCC 282- Paras 56-58 – List of judgments given by the Ld. AG – Establishment of expressway by private establishment was held to be public purpose.

***31.*** Insofar as the Involvement of KVK in the process of acquisition is concerned, it is submitted that for setting up a power plant of this magnitude (1200 MW) with an investment of Rs.4,990 crores, it is imperative that the location of land is suitable in the sense of important parameters such as rail and road connectivity, access to water, power evacuation facilities etc., which the KVK is always in the best position to ascertain. That, however, does not mean that the acquisition will lose its "public purpose" character.

***32.*** The further fact that the name of KVK is mentioned in notices u/s.5-A of the LA Act is not a determinative factor, when otherwise the facts of the present case, clearly establish that the acquisition is under Part II of the Act. It is pertinent to mention that

neither in Section 4 nor in Section 6 Notification the name of the KVK is mentioned.

***33.*** Insofar as the allegation of "colorable exercise of power" by the State Government is concerned, the Hon'ble Supreme Court in various judgments including in ***Somawanti Vs. State of Punjab*** – AIR 1963 SC 151 (quoted in Para 12 of Pratibha Nema case (supra) has held that **conclusiveness of Section 6 declaration is open to challenge only on the ground of colourable exercise of power**. It is also settled law that in order to allege and establish malafides and colourable exercise of power by the Govt. the burden is heavy on the petitioners. In the present case, apart from merely using the expression "colourable exercise of power", the petitioners have failed to make out any case.

The Hon'ble Supreme Court has further held in Para 119 of ***Sooraram Pratap Reddy's*** case that **"In our judgment, in deciding whether the acquisition is for "public purpose" or not, prima facie, the Government is the best judge. Normally, in such matters, writ court will not interfere by substituting its judgment for the judgment of the Government**."

***34.*** Insofar as the payment of Compensation, it is stated that the MoU executed between the KVK and State Government under Clause 5.A(iv) provides that the KVK agrees to pay cost of the land to IDCO in case the land is acquired for the purpose. In the present

case, admittedly, no payments have been made by the KVK to LAO. All payments have been made by the KVK to IDCO and it is IDCO which has made payment of compensation for acquired land to the LAO. It is important to note that under Section 20 of the IDCO Act, IDCO maintains a statutory fund. Once the amounts/monies are paid by the KVK to IDCO, the said amounts/monies merged into the funds of IDCO and lost their character.

Reliance is placed on the judgment of the Hon'ble Supreme Court in ***Pratibha Nema case*** (supra), held that "**The genesis of the fund is not the determinative factor, but its ownership in prasenti that matters**.". Applying this principle laid down by the Hon'ble Supreme Court to the facts of the present case, the monies once deposited in the account of IDCO by the KVK, belonged to IDCO and any payments made by IDCO to LAO would be out of public funds thereby complying with second proviso to Section 6 of the LA Act and the ratio laid down by the Hon'ble Supreme Court in Pratibha Nema's case.

***35.*** In view of the contentions raised before us as noted hereinabove, the following issues arise for consideration:

(i) Whether the notification U/s.6 of the Land Acquisition Act dated 21.07.2009 (published in the Orissa Gazette on 30th July, 2009) is in-operative having been passed allegedly beyond one year from the date of issue of

notification under Section 4(1) of the Land Acquisition Act, 1894?

(ii) Whether the Collector conducted the hearing under Section 5-A of the Land Acquisition Act, had failed in his duty by not assigning detailed reasons for each individual case/objector and as a consequence of which such report has resulted in violating the rights of the petitioner and prevented the State from applying its independent mind to the acquisition proceeding?

(iii) Whether the acquisition of land in the present case ought to have been taken place under Part-VII of Land Acquisition Act and not Part-II and consequently amounts to a "colourable exercise of power" by the State for the benefit of a private party.

***36.*** Insofar as the first issue is concerned, it is clear from the statement provided by the State as quoted in para-20 above that the notification under Section 4(1) though dated 11.07.2008 were also published in the local newspapers on 28.07.2008 as well as 04.08.2008 and further that the declaration under Section 6(1) of the L.A. Act were duly published on 21.07.2009 and 23.04.2009 all within the period of one year from the date of issue of the notifications under Section 4(1) of the L.A. Act. Consequently, the

allegation of the petitioner regarding delay in publication of 6(1) notification is factually incorrect and misplaced and consequently, stands rejected.

***37.*** Insofar as the second issue is concerned, this Court had called upon the State to produce all records for the purpose of verification by the Court. On perusal of the records produced before this Court, we find that the objections were received to Section 4(1) notification from a total of 62 individuals, whose names and relevant details are quoted hereunder in four groups.

**(A)** **COMPENSATION RECEIVED**

| Sl. No. | Name | W.P.(C) No. | Village | LA Case No. | Objection after 4(1) notice | Presence during 5-A hearing | Time petition during 5-A hearing | Whether 5-A objection similar/ identical | Whether compensation received |
|---|---|---|---|---|---|---|---|---|---|
| 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 |
| 1. | Sarat Dehury | **No Case No.** | | | | | | | |
| 5. | Surendra Muduli | 15988/2011 | Kandarei | 7/08 | Filed | Not present | | | |
| 13. | Chatrubhuja Behera | 9326/2009<br>15042/2009 | Kandarei | 7/08 | Filed | Present | Filed | | |
| 24. | Alekh Naik | **No Case No.** | | | | | | | |
| 28. | Mathuri Naik | 9326/2009 | Khanduali | 8/08 | Filed | Present | | | |
| 29. | Anadi Naik | 15988/2011<br>15042/2009<br>9326/2009 | Khanduali | 8/08 | Filed | Present | Filed | | |
| 31. | Narayan Sahoo | 15988/2011<br>15042/2009<br>9326/2009 | Khanduali | 8/08 | Filed | Present | Filed | | |
| 33. | Madhab Chandra Dehury | **No Case No.** | | | | | | | |
| 34. | Sauri Dehury | 15988/2011<br>15042/2009 | Khanduali | 8/08 | Filed | Present | Filed | | |
| 35. | Bira Dehury | 15988/2011<br>15042/2009 | Khanduali | 8/08 | Filed | Present | Filed | | |
| 40. | Bibasta Pradhan | 9326/2009<br>15042/2009 | Rahangola | 9/08 | Filed | Present | Filed | | |
| 41. | Basanta Pradhan | 9326/2009<br>15042/2009 | Rahangola | 9/08 | Filed | Present | Filed | | |

| | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|
| 42. | Suguri Pradhan | 9326/2009<br>15088/2011<br>15042/2009 | Rahangola | 9/08 | Filed | Present | Filed | | |
| 45. | Bauri Dehury | 9326/2009<br>15988/2011 | Rahangola | 9/08 | Filed | Present | Filed | | |
| 47. | Jogi Dehuri | 9326/2009<br>15042/2009<br>22838/2011<br>15988/2011 | Rahangola | 9/08 | Filed | Present | Filed | | |
| 48. | Pravati Bewa | 9326/2009<br>15042/2009 | Rahangola | 9/08 | Filed | Present | Filed | | |
| 49. | Rabi Dehuri | 9326/2009 | Rahangola | 9/08 | Filed | Present | Not filed | | |
| 52. | Hrishi Behera | 9326/2009<br>15042/2009 | Rahangola | 9/08 | Filed | Present | Filed | | |
| 53. | Arta Behera | 9326/2009<br>15042/2009 | Rahangola | 9/08 | Filed | Not present | Filed | | |
| 57. | Gandharba Naik | 9326/2009<br>15042/2009 | Dalua | 10/08 | Filed | Present | Filed | | |
| 58. | Sibaram Sahoo | 9326/2009<br>15042/2009 | Dalua | 10/08 | Filed | Present | Filed | | |

**(B)** **PRIVATE SALE**

| **Sl. No.** | **Name** | **W.P.(C) No.** | **Village** | **LA Case No.** | **Objection after 4(1) notice** | **Presence during 5-A hearing** | **Time petition during 5-A hearing** | **Whether 5-A objection similar/ identical** | **Whether compensation received** |
|---|---|---|---|---|---|---|---|---|---|
| **1** | **2** | **3** | **4** | **5** | **6** | **7** | **8** | **9** | **10** |
| 03. | Nilamani Subudhi | 9326/2009<br>15988/2011 | Kandarei | 7/08 | Filed | Present | Filed | | |
| 08. | Bilasuni Mohapatra | 9326/2009 | Kandarei | 7/08 | Filed | Not present | Not filed | | |
| 19. | Golakh Dehuri | 15042/2009<br>9326/2009 | Khanduali | 8/08 | | Present | | | |
| 23. | Sikara Dehuri | **No Case No.** | | | | | | | |
| 26. | Bauri Pradhan | 9326/2009 | Khanduali | 8/08 | | Present | Not filed | | |
| 43. | Gobinda Behera | 9326/2009<br>15042/2009 | Rahangola | 9/08 | Filed | Present | Filed | | |
| 46. | Raghunath Rana | **No Case No.** | | | | | | | |
| 55. | Kuma Bewa | **No Case No.** | | | | | | | |
| 56. | Bilash Nayak | 9326/2009<br>15042/2009 | Dalua | 10/08 | Filed | Present | Filed | | |
| 60. | Kanduri Roul | **No Case No.** | | | | | | | |
| 62. | Golekhabihari Mohanty | **No Case No.** | | | | | | | |

## (C) NOT LAND LOSER

| Sl. No. | Name | W.P.(C) No. | Village | LA Case No. | Objection after 4(1) notice | Presence during 5-A hearing | Time petition during 5-A hearing | Whether 5-A objection similar/ identical | Whether compensation received |
|---|---|---|---|---|---|---|---|---|---|
| 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 |
| 14. | Kirtan Naik | 15988/2011<br>15042/2009<br>9326/2009 | Khanduali | 8/08 | Filed | Present | Filed | | |
| 16. | Panu Sahu | 15988/2011<br>15042/2009<br>9326/2009 | Khanduali | 8/08 | Filed | Son present | Filed | | |
| **17.** | **Manguli Dehury** | **No Case No.** | | | | | | | |
| 18. | Kailash Dehury | 15042/2009<br>9326/2009 | Khanduali | 8/08 | Filed | Present | Filed | | |
| 20. | Dijabara Naik | 9326/2009 | Khanduali | 8/08 | Filed | Present | Filed | | |
| 21. | Gundicha Dehury | 9326/2009 | Khanduali | 8/08 | Filed | Not present | Not filed | | |
| 22. | Kiran Naik | 15042/2009<br>9326/2009 | Khanduali | 8/08 | Filed | Present | Filed | | |
| 25. | Sarat Naik | 9326/2009 | Khanduali | 8/08 | Filed | Not present | Not filed | | |
| **54.** | **Basu Behera** | **No Case No.** | | | | | | | |
| 59. | Fagu Naik | 15042/2009<br>9326/2009 | Dalua | 10/08 | Filed | Present | Filed | | |

## (D) OTHER CATEGORY

| Sl. No. | Name | W.P.(C) No. | Village | LA Case No. | Objection after 4(1) notice | Presence during 5-A hearing | Time petition during 5-A hearing | Whether 5-A objection similar/ identical | Whether compensation received |
|---|---|---|---|---|---|---|---|---|---|
| 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 |
| 02. | Ramesh Chandra Mohapatra | 30882/2011<br>22636/2011<br>15042/2009<br>9326/2009<br>15968/2011 | Kandarei | 7/08 | Filed | Present | Filed | Yes | No |
| 04. | Padmabati Bewa | 30882/2011<br>9326/2009 | Kandarei | 7/08 | Filed | Son -Nakula Muduli present | Filed | Yes | No |
| 06. | Ashok Mohapatra | 9326/2009<br>15042/2009 | Kandarei | 7/08 | Filed | Present | Filed | Yes | No |
| 07. | Pramesh Mohapatra | 30882/2011<br>9326/2009<br>15042/2009<br>15988/2011 | Kandarei | 7/08 | Filed | Present | Filed | Yes | No |
| 09. | Budhi Bewa | 30882/2011<br>9326/2009 | Kandarei | 7/08 | Filed | Son -Prasant Ku. Sahoo present | Filed | Yes | No |

| | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|
| 10. | Narendra Mohapatra | 22838/2011<br>30882/2011<br>9326/2009 | Kandarei | 7/08 | Filed | Present | Filed | Yes | No |
| 11. | Chatubhuja Mohapatra | 9326/2009<br>27845/2011 | Kandarei | 7/08 | | Not present | | | No |
| 12. | Kishori Dehuri | **No Case No.** | | | | | | | No |
| 15. | Ashok Kumar Das | 30882/2011 | Khanduali | 8/08 | Filed | Present | Filed | Yes | No |
| 27. | Usha Das | 15042/2009<br>9326/2009<br>30882/2011 | Khanduali | 8/08 | Filed | Son-Ashok Das present | Filed | Yes | No |
| 30. | Suresh Patra | 15988/2011<br>15042/2009<br>9326/2009<br>27845/2011 | Khanduali | 8/08 | Filed | Present | Filed | Yes | No |
| 32. | Jaladhar Dehuri | **No Case No.** | | | | | | | |
| 36. | Ramesh Behera | 15042/2009<br>9326/2009 | Rahangola | 9/08 | Filed | Present | Filed | Yes | Ghana Behera recorded tenant Khata No.78/24 & 78/193 |
| 37. | Prafulla Behera | 15042/2009 | Rahangola | 9/08 | Filed | Present | Filed | Yes | Doli Behera Recorded tenant Khata No.17 |
| 38. | Ghana Behera | 9326/2009<br>15042/2009<br>22838/2011 | Rahangola | 9/08 | | Present | | | |
| 39. | Narana Behera | 9326/2009<br>15042/2009<br>22838/2011 | Rahangola | 9/08 | Filed | Present | Filed | Yes | |
| 44. | Sanatan Behera | 9326/2009<br>15042/2009<br>22838/2011 | Rahangola | 9/08 | Filed | Present | Filed | Yes | Not received |
| 50. | Hemanta Kumar Rana | 9326/2009<br>15042/2009 | Rahangola | 9/08 | Not filed | Present | Filed | | Dolagobinda Rana Recorded tenant |
| 51. | Damodar Chaini | 17476/2009 | Rahangola | 9/08 | Filed | Present | Not filed | Not similar | Not received |
| 61. | Pradipa Kumar Sahoo | 27845/2011 | | | | | | | |

The Collector after issue of section 4(1) notification issued notices to all land losers or affected parties to file their objections and also issue notices for personal hearing. The following so many number of persons i.e. 21 persons amongst them have received their compensation, a further 11 persons have effected private sale of their

land to KVK and ten persons who have filed objections have no connection with the acquisition since they are not land losers and the balance 20 persons named in the "Other Category" are the only persons, who have not collected their compensation from the Land Acquisition Officer and are effectively the persons who challenge the L.A. proceeding in the present batch of petitions.

***38.*** Insofar as the persons who have been named in the "Not Land Loser group" or "Private Sale group", writ petition on their behalf obviously are infructuous since such persons either have not lost any land or have made private sale of their land to the KVK. Insofar as the persons grouped under the "Compensation Received" having received their compensation, may at best be aggrieved by the quantum of compensation awarded and consequently are at liberty to seek enhancement of compensation before the appropriate forum if they feel aggrieved by the quantum determined.

Insofar as the persons grouped under "Other category" are concerned, 18 of them have filed cyclostyled objections. Except one Damodar Chaini, petitioner in W.P.(C) No.17476 of 2009, has filed a detailed objection and participated at the hearing. The others though present at the time of hearing sought for adjournment of the hearing.

***39.*** In the light of the aforesaid facts, it become necessary to take note of the report of the Collector on conclusion of 5-A hearing

has clearly categorized the nature of the objections raised by the objectors in the following manner:

1) Lands in the area are fertile.

2) Petitioners have no occupation other than agriculture.

3) The compensation amount decided in L.A. proceeding being inadequate, higher compensation may be paid.

4) They will become land less, if acquisition of their land is made.

5) As their lands are to be acquitted, they are to be declared as displaced.

6) Adequate rehabilitation and employment be provided to land owners affected by land acquisition.

On considering all the objections raised, the Collector came to conclude that the identical objections had been raised and consequently submitted a common report on conclusion of the proceeding under Section 5-A of the Land Acquisition Act. The Collector also took into account the fact that the State having prepared R & R. Policy, all the issues raised related to compensation, displacement, rehabilitation and employment which would necessarily be taken care by the R & R policy. In the said proceeding, it appears that the entire hearing was recorded in the form of videographics and the C.D. of such proceedings were also attached to its report.

At this point, it become necessary to take note of the contention advanced on behalf of Damodar Chaini in W.P.(C)

No.17476 of 2009. On perusing the averments made therein and after hearing Mr. S.K. Das, learned Senior Advocate appearing for Damodar Chaini, we observe that the said petitioner has highlighted the efforts made by him to develop the land and to make the land fit for agricultural operation and he has highlighted the tremendous efforts both physical as well financial investments made by him on his land. The petitioner also stated that he had settled in the said land with his wife after retiring from Government service and had also became extremely attached to the land since he was developing it post retirement. While there can be no doubt that when land is acquired every persons who loss his/her land is emotionally disturbed and the relationship between the occupier of the land with the land is extremely intense and personal. Yet such issues and sentiments are not matters which can be taken into consideration by the Collector at a hearing under Section 5-A of the Land Acquisition Act. Section 5-A of the Land Acquisition Act is quoted hereunder.

> "**5-A. Hearing of objections-**(1)Any persons interested in any land which has been notified under Section 4, sub-section(1), as being needed or likely to be needed for a public purpose or for a Company may, (within thirty days from the date of the publication of the notification), object to the acquisition of the land or of any land in the locality, as the case may be.
>
> (2) Every objection under sub-section(1) shall be made to the Collector in writing, and the Collector shall give the objector an opportunity of being heard (in person or by any person authorised by him in this behalf) or by pleader and shall, after hearing all such

> objections and after making such further inquiry, if any, as he thinks necessary, (either make a report in respect of the land which has been notified under Section 4, sub-section(1), or make different reports in respect of different parcels of such land, to the appropriate Government, containing his recommendations on the objections, together with the record of the proceedings held by him, for the decision of that Government). The decision of the (appropriate Government) on the objections shall be final.
>
> (3) For the purpose of this section, a person shall be deemed to be interest in land who would be entitled to claim an interest in compensation if the land were acquired under this Act.

***40.*** Insofar as the nature of the objections are concerned in all the cases, including the case of Damodar Chaini as noted hereinabove, their objections not only covered by the R & R policy of the State but the issues will have to be taken into consideration by the Land Acquisition Officer while determining the quantum of compensation as mandated under Section 23 of the Land Acquisition Act, 1984. For the purpose of convenience Section 23 is extracted herein below.

> "**23. Matters to be considered in determining compensation-** (1) In determining the amount of compensation to be awarded for land acquired under this Act, the Court shall take into consideration-
>
> First- the market-value of the land at the date of the publication of the (notification under Section 4, sub-section(1);
>
> Secondly, the damage sustained by the person interested, by reason of the taking of any standing crops or trees which may be on the land at the time of the Collector's taking possession thereof;

> Thirdly, the damage (if any) sustained by the person interested, at the time of the Collector's taking possession of the land, by reason of severing such land from his other land;
>
> Fourthly, the damage (if any) sustained by the person interested, at the time of the Collector's taking possession of the land, by reason of the acquisition injuriously affecting his other property, movable or immovable, in any other manner, or his earning;
>
> Fifthly, if, in consequence of the acquisition of the land by the Collector, the person interested is compelled to change his residence or place of business, the reasonable expenses (if any) incidental to such change; and
>
> Sixthly, the damage (if any) bona fide resulting from diminution of the profits of the land between the time of the publication of the declaration under Section 6 and the time of the Collector's taking possession of the land.
>
> (1-A) In addition to the market-value of the land, as above provided, the Court shall in every case award an amount calculated at the rate of twelve per centum per annum on such market-value for the period commencing on and from the date of the publication of the notification under Section 4, sub-section91), in respect of such land to the date of the award of the Collector or the date of taking possession of the land, whichever is earlier.
>
> Explanation-In computing the period referred to in this sub-section, any period or periods during which the proceedings for the acquisition of the land were held up on account of any stay or injunction by the order of any court shall be excluded.
>
> (2) In addition to the market-value of the land, as above provided, the Court shall in every case award a sum of )thirty per centum) on such market-value, in consideration of the compulsory nature of the acquisition."

After taking the objections into account as well as the grievances of the objectors in general, we are of the considered view that such objections and/or claims are matters which will have to be

considered by the Land Acquisition Officer in course of determination of compensation and each and every aspect of any individuals objection is clearly covered by section 23 of the Land Acquisition Act and, therefore, we find no justifiable basis for entertaining such objections on the ground as pleaded.

***41.*** On the issue of "colourable exercise of power" and applicability of Part-II or Part-VII of the L.A. Act is concerned, the petitioners have laid stress the fact that Section 3(f) where the term "Public Purpose" have been defined came to amend in the year 1984.

***42.*** Whereas the judgment relied upon by the petitioners which is noted in para-12 hereinabove is now required to be dealt with:

Insofar as **Girnar Traders(3) v. State of Maharashtra**, (2011)3 SCC 1 is concerned , the said judgment of the Hon'ble Supreme Court has dealt with the issue as to whether the Maharashtra Regional and Town Planning Act, 1966 ( in short 'MRTP Act') is a "self-contained code" or not and further, as to the applicability of provisions of the Land Acquisition Act, 1894 relating to the extent of acquisition of land, payment of compensation and recourse of legal remedies provided in the said Act were read into an acquisition controlled by the provision of MRPP Act. Consequently, the aforesaid judgment cited by the petitioners is of no assistance for adjudication of the issues raised in the present case.

In the case of **Dev Sharan & others v. State of U.P. & others,** (2011) 4 SCC 769 the Hon'ble Supreme Court held that the acquisition of land for setting up of jail is certainly a "public purpose" as defined under Section 3(f) and 5-A of the Land Acquisition Act, 1894. However, the said case was the case where the special powers in case of urgency under Section 17(4) had been resorted to and the Hon'ble Supreme Court came to hold that on the facts of the case that such acquisition ought not to have been made by invoking Section 17 of the Act. In the present case, Section 17 of the Act and powers therein have not been invoked and consequently, the said judgment cited by the petitioners is not of any assistance for adjudicating the issues raised herein.

In the case of **Radhy Shyam (Dead) through legal heirs & others v. State of U.P. & others,** (2011) 5 SCC 553 is concerned, it involves a case where the authority had invoked the urgency clause and dispensed with an enquiry under Section 5-A as noted hereinabove, the urgency clause has not been utilized in the present fact situation of this case. Hence, the aforesaid decision is not of much assistance to the present case.

In the case of **Tukaram Kana Joshi and others v. Hamahashtra Industrial Development Corporation and others,** (2013) 1 SCC 353 is concerned, the Hon'ble Supreme Court came to hold that even after the right to property ceased to be a fundamental

right, taking possession of or acquiring property of a citizen can take place only in accordance with "law" as per mandate of Article 300-A i.e. such deprivation can only be resorted to by complying with the procedure prescribed by a statute and the same cannot be done by way of executive fiat or order or administrative caprice and directed the respondent-authority to notify the appellants land under Section 4-A of the L.A. Act within four weeks of the order and issue Section 6 declaration within one week thereafter. Section 9 notice was also directed to serve within four weeks after publication of Section 6 declaration and award be made within a period of three months thereafter. In the fact situation of the present case, the issues raised in the present writ application do not attract the issues dealt with by the Hon'ble Supreme Court in the said judgment and consequently, the said judgment is of no assistance in deciding the issues raised herein.

In the case of **B. Anjanappa and others v. Vyalikaval House Building Cooperative Society Limited and others,** (2012) 10 SCC 184 is concerned, the Hon'ble Supreme Court came to hold that the approval accorded by the State Government for acquisition of land and the directions to the Deputy Commissioner to issue Section 4(1) notification is held to be bad in law. In the absence of any scheme framed by the respondent and securing of approval from State Government, the directions issued to the Deputy Commissioner

to issue Section 4(1) notification could not be treated as State Government's approval of housing scheme. Further Hon'ble Supreme Court held that the direction issued by the Single Judge of the High Court for issuance of declaration under Section 6(1) was wholly unwarranted, since the direction given by the Single Judge of the High Court had been rendered infructuous, inasmuch as, time within which declaration under Section 6(1) could be issued had expired. In view of the aforesaid fact situation, the aforesaid judgment is not of much assistance to this Court in deciding the present lis.

In the case of **Rajiv Pujari v. State of Orissa & others,** 2010 (II) ILR Cuttack 1008 is concerned, the petitioner had sought to challenge the acquisition of land under the L.A. Act, 1894 for the purpose of establishment of an University, in paragraph-42 of the judgment, the High Court in the Bench headed by Hon'ble the Chief Justice V. Gopala Gowda (as he the then was) came to hold that the issuance of Section 4(1) notification 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. Thereafter, held that the initiation of the proceedings by issuance of notifications under Section 4(1) of the L.A. Act had been made for the establishment of Vedanta University which was not in existence either under the State University Act or

the U.G.C. Act at the time when the proposed acquisition of lands was made by issuing preliminary notifications which was held to be bad in law. The facts of the present case are distinct and no similarity to the case as referred to.

However, in the said judgment this Court on perusing the records produced by the State Government reached at a conclusion that "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 under Section 6 declaration notification declaring the proposed lands in favour of the beneficiary company for establishment of the University".

In the case of **Kamal Trading Private Limited v. State of West Bengal and others,** (2012) 2 SCC 25, Hon'ble Supreme Court dealt with the rights vested in the land losers under Section 5-A of the L.A. Act and held as follows: (Para-18,19,20,22 & 28)

> "18. In ***Munshi Singh v. Union of India*** , this Court while dealing with Section 5A of the LA Act observed as under :
>
> > "7. Section 5-A embodies a very just and wholesome principle that a person whose property is being or is intended to be acquired should have a proper and reasonable opportunity of persuading the authorities concerned that acquisition of the property

> belonging to that person should not be made. ... The legislature has, therefore, made complete provisions for the persons interested to file objections against the proposed acquisition and for the disposal of their objections. It is only in cases of urgency that special powers have been conferred on the appropriate Government to dispense with the provisions of Section 5-A."

19. In ***Om Prakash v. State of Uttar Pradesh***, referring to its earlier judgment in **State of Punjab v. Gurdial Singh**, this Court raised the right under Section 5A of the LA Act to the level of fundamental right and observed that: (*Om Prakash case, SCC pp.23-24, para-21)*

> "21….inquiry under Section 5A is not merely statutory but also has a flavour of fundamental rights under Articles 14 and 19 of the Constitution though right to property has now no longer remained a fundamental right, at least, observation regarding Article 14 vis-a-vis Section 5A of the LA Act would remain apposite.

20. In Mukesh Hans this Court reiterated that:

> "36. … right of representation and hearing contemplated under Section 5-A of the Act is a very valuable right of a person whose property is sought to be acquired and he should have appropriate and reasonable opportunity of persuading the authorities concerned that the acquisition of the property belonging to that person should not be made."

22. In *Hindustan Petroleum Corporation*, this Court again referred to *Om Prakash* and observed that it is trite that hearing given to a person must be an effective one and not a mere formality. This Court observed that: (*Hindustan Petroleum Corpn. Case,* SCC p.635, para 9)

> "9…..Formation of opinion as regards the public purpose as also suitability thereof must be preceded by application of mind as regards consideration of relevant factors and rejection of irrelevant ones."

This Court further observed that the State in its decision-making process must not commit any misdirection in law. This Court observed that it cannot be disputed that

> "Section 5A of the LA Act confers a valuable important right and having regard to the provisions contained in Article 300- A of the Constitution, it has been held to be akin to a fundamental right." (*Hindustan Petroleum Corporation case,* SCC p.635, para-9)

Pertinently, this Court made it clear that in a case where there has been total non-compliance or substantial non-compliance with the provisions of Section 5A of the LA Act, the Court cannot fold its hands and refuse to grant relief to the appellant. Again in Dev Saran, this Court reiterated the same view."

> 28**.** By no stretch of imagination, it can be said that the Second Land Acquisition Officer had applied his mind to the objections raised by the appellant. The above-quoted paragraphs are bereft of any recommendations. The Second Land Acquisition Officer has only reproduced the contentions of the officers of the Acquiring Body. The objections taken by the appellants are rejected on a very vague ground. Mere use of the words `for the greater interest of public' does not lend the report the character of a report made after application of mind. Though in our opinion, the declaration under Section 6 of the LA Act must be set aside because the appellant was not given hearing as contemplated under Section 5A(2) of the LA Act, which is the appellant's substantive right, we must record that in the facts of this case, we are totally dissatisfied with the report submitted by the Second Land Acquisition Officer. His report is utterly laconic and bereft of any recommendations. He was not expected to write a detailed report but, his report, however brief, should have reflected application of mind. Needless to say that as to which report made under Section 5A(2) could be said to be a report disclosing application of

> mind will depend on the facts and circumstances of each case."

In the light of the reliance placed by the petitioners essentially on two judgments, namely, **Kamal Trading** (supra) and **Rajiv Pujari** (supra), the learned counsels for the opposite parties do not raise any objections to the principles enunciated in the aforesaid judgments. On the contrary, they also assert that in the fact situation of the present case all procedural requirements which are meant for safeguarding the interest of the possible land losers have been duly complied with and, therefore, the aforesaid judgments would have no application to the fact situation of the present case. On perusal of the documents produced by the State and the objections filed by the petitioners, we find that all the objections have been cyclostyled and are identified in nature except the objection of Damodar Chaini (petitioner in W.P.(C) No.17476 of 2009). Out of 62 objectors, 40 persons have also participated at the hearing and the report of the Collector has duly considered and categorized the specific points of objections raised. So unlike the case of **Rajiv Pujari** (supra) where the records of the State indicated otherwise, in the case at hand, we find to the contrary. In other words, substantial number of land losers participated in the hearing which was also videograph by the Collector. All objections as well as the C.D. of the video was sent to the State. The State thereafter based on an earlier

direction of this Court in W.P.(C) No.16822 of 2008, directed the R.D.C. to carry out a "socio-economic survey". The report of which has been quoted hereinabove in para-7 and only thereafter directed publication of a notice under Section 6(1) of the L.A. Act.

Whereas the judgments relied upon by the petitioners which is noted in para-15 hereinabove is now required to be dealt with:

Insofar as the judgment of the Hon'ble Supreme Court in the case of **Greater Noida Industrial Development Authority vs. Devendra Kumar and Others,** (2011) 12 Supreme Court Cases 375 is concerned, the Hon'ble Supreme Court came to conclude that the entire exercise of acquisition was designed to serve the interest of builders and the veil of "public purpose" was used to mislead people into believing that the land was being acquired for a "public purpose". In the said case the Hon'ble Supreme Court took note of the fact that the authorities had invoked the urgency clause under Section 17(1) and had dispensed with the enquiry under Section 5-A and came to hold that in the fact situation of the said case, there was no justification for invoking such urgency clause nor dispensing with Section 5-A hearing. In the present case at hand, neither the urgency clause under Section 17(1) has been resorted to nor has 5-A hearing been dispensed with.

In the present case, we are of the considered view that the State Government, IDCO as well as the Project proponent had acted clearly in consonance with the Industrial Policy Resolution of the State Government, provisions of the OIIDC Act and Rules as well as the mandatory requirements of the L.A. Act, 1894 and consequently, we are of the further considered view that the facts of the present case are clearly distinguishable from the judgment relied upon by the petitioner hereinabove.

Insofar as the case of **Royal Orchid Hotels Limited and Another vs. G.Jayarama Reddy and Others,** (2011) 10 Supreme Court Cases 608 is concerned, the Hon'ble Supreme Court held that an acquisition of land under the L.A. Act, in conclusion of which the land acquired, was alienated to a private party after 12 years of acquisition and consequently, the Hon'ble Supreme Court came to hold that, if the land is to be acquired for a company, the State Government and the company are bound to comply with the mandate of the provisions of part-VII of the L.A. Act. In the case at hand, the acquisition has been made by the State Government for IDCO i.e. a State undertaking created under the State statute, who in turn, have leased the land in favour of the project proponent-KVK for setting up of a "power plant" which in the Industrial Policy Resolution of the State has been declared to be an "infrastructure project" and all infrastructure projects have been held and declared

by the State to sub-serve "public purpose". Consequently, the judgment relied upon by the petitioner as noted hereinabove is distinct on fact from the present case.

Insofar as the case of **Devinder Singh and Others vs. State of Punjab and Others**, (2008) 1 Supreme Court Cases 728 is concerned, on the fact situation that arose in the said case, it appears that M/s International Tractors Limited had made an application which is a company incorporated under the Companies Act, 1956 intended to set up a project named "Ganesha Project" for which it requested the State to acquire lands under the Land Acquisition Act, 1894. A notification under Section 4 was issued and in the case at hand it was found by the Hon'ble Supreme Court that the said acquisition could not have proceeded under part-II of the L.A. Act but ought to have proceeded under part-VII. In the said judgment, although it was contended on behalf of the project proponent that once a declaration that the land has been acquired for "public purpose" is made, the same is conclusive yet, the Hon'ble Supreme Court came to hold that when such an order is passed without jurisdiction, the same amounts to a "colourable exercise of power.". In the present case, Sections 4 & 6(1) notifications clearly indicates that the land is being acquired for and on behalf of IDCO and in this case Their Lordships affirmed the views expressed by the Hon'ble Supreme Court in the case of **Pratibha Nema (supra)** and

upheld the view that the point of distinction between the acquisition of land under part-II and part-VII, would be the source of funds to cover the cost of the acquisition and further held that the 2nd proviso to Section 6(1) is the main dividing line for the two types of acquisition.

In the present case, as we have held hereinabove, it is IDCO, the Government Corporation which paid the money for the acquisition to the L.A.O while the project proponent had, in fact, paid money to IDCO and once the payment made by the KVK-project proponent to IDCO, the said amounts merges with the funds of IDCO and any payment made by IDCO therefrom has to be held to be made from out of "public fund" and consequently, this distinction which had been laid down by the Hon'ble Supreme Court in the case of **Pratibha Nema (supra)** has been upheld by the Hon'ble Supreme Court in the case of **Devinder Singh (supra)** and, therefore, we find no hesitation in holding that the fact situation of the present case is distinct from that which arose for consideration in the case of **Devinder Singh (supra).**

Reliance was also placed by the petitioner in the cases of **State of Tamil Nadu v. K.Shyam Sunder**,(2011)8SCC 737; **Coal India v. Ananta Saha**, (2011) 5 SCC 142; **Nishakar Khatua v. State of Orissa & Ors.**,(2012)I ILR Cutt.19; **Rajiv Pujari v. State of Orissa**

**& Ors.,** 2010(II)ILR Cutt. 1008; **Centre for PIL v. U.O.I,** (2012) 3 SCC 1 and **Surinder Singh Brar v. Union of India,** (2013) 1 SCC 403. On perusal of the aforesaid judgments, we may note that the said judgments are distinct on facts and are no applicability to the present case.

***43.*** Therefore, we are of the considered view that the fact situation that has arisen for consideration in the present case is not similar to that which arose in the case of **Rajiv Pujari** (supra) and we are satisfied that the records produced clearly disclose the necessary application of mind by the executive prior to granting approval for publication of Section 6 declaration.

***44.*** We next come to deal with the issue as to whether the State could have proceeded to acquire the land under part-II ant not Part-VII of the L.A. Act as alleged and whether the action taken by the State amounts to a "colourable exercise of power" by the State. In this respect, it would be important to take note of the fact that the State in its submissions before this Court has stated that setting up of a power plant is of a vital importance for the development of the State and its industrial sector as well as domestic consumption and, therefore, satisfies the requirements of "public purpose" as defined under Section 3(f) of the L.A. Act. The State have also referred to its Industrial Policy Resolution, 2007 and, in particular, Clause-10 thereof wherein "infrastructure project" includes power plants. Since

setting up of a "power plant" as declared by the State to be an "infrastructure project" in terms of its Industrial Policy Resolution, 2007, Clause 9.3 the State enterprise, known as "Industrial Development Corporation Orissa" (IDCO) was required to carry out its objectives and, in particular, for infrastructure project Clause 16.3 entitled allocation of Government land at concessional industrial rates and consequently, since the IPR 2007 had declared "power plant" as "infrastructure project", establishment of a power plant would in our view no doubt subserve "public purpose". Once the power plant is set up in terms of the MoU entered into between the State Government as well as the KVK, the State would be entitled to substantial benefits arising out of the said MoU and there cannot be any doubt raised that the acquisition, sub-serves a "public purpose".

***45.*** Learned counsel appearing for the IDCO also supported the aforesaid submissions and stated that under Section 31 of the OIIDC Act, 1980 stipulates that whenever land is required by the Corporation for any purpose in furtherance of the objectives of the Act, it could approach the State Government to initiate action under the L.A. Act on behalf of the Corporation, since admittedly the IDCO is an instrumentality of the State to sub-serve Government policy.

In view of the aforesaid findings, we are clearly of the considered view that acquisitions of land for the purpose of setting

up of KVK Power Plant does fulfill the criteria for being declared as sub-serving "public purpose".

***46.*** Insofar as the contention raised regarding payment having been made by the KVK to IDCO and who in turn, made the payments to the Land Acquisition Officer, for disbursement to the land oustees. It is important to take note of Section 31(2) of the OIIDC Act, 1980, whereby the IDCO is empowered to make requisition to the State for the purpose of acquisition of land under the L.A. Act, 1894. The amount of compensation awarded and all other charges incurred in the acquisition of such land shall be paid by the Corporation and the land shall vest in the Corporation. In the case at hand, admittedly, even though KVK has paid the money to IDCO, IDCO has, in fact, deposited the compensation amount with the Land Acquisition Officer. In this respect, reliance is also placed on Section 6 (Second Proviso) read with Explanation-2 which clearly provides that, no such declaration under Section 6 shall be made unless the compensation to be awarded is to be paid out of the funds of the Corporation owned or controlled by the State and such compensation shall be deemed to be compensation to be paid out of "public revenue". In the case at hand, Explanation-2 (2$^{nd}$ proviso) of Section 6 is clearly attracted and there exists no evidence on record to the contrary. Therefore, it is held that since IDCO (the Government Corporation) has deposited the money with the Land

Acquisition Officer, the deeming provision of Explanation-2 comes into operation and consequently, it has to be "deemed to be compensation paid out of public revenue". In this respect the judgment of the Hon'ble Supreme Court in the case of **Pratibha Nema** (supra) and **Soorarama Pratap Reddy** (supra) are vitally important.

***47.*** The next issue is to be dealt with in the present case is based on the allegation that KVK was involved in the process of selecting the land for acquisition. In this regard, on consideration of the submissions advanced by the learned counsel representing the various parties, we are of the considered view that for the purpose of setting up of mega power plant having a capacity of 200 M.W. requiring a investment of nearly Rs.5000.00 crores, it is absolutely essential that the location of such land must be suitable, for the purpose of the Thermal Power Plant and various important criteria, such as, rail and road connectivity, availability of water and convenience of power evacuation are all issues which only the project proponent company i.e. KVK has to ascertain for itself. Consequently, identifying the land and suggesting the land to IDCO for the purpose of acquisition by the KVK, does not in any manner effect the "public purpose" part of the Land Acquisition Act. In a country such as ours, where industrialisation is vital for its economic future, we find no justification in entertaining the contentions of the

petitioners that the mere involvement of the project proponent i.e. KVK in identifying the land brought the said acquisition under Part-VII and not part-II of the Land Acquisition Act.

***48.*** In the case of **Pratibha Nema** (supra), similar arguments had been raised by the project opponents and the same was rejected by the Hon'ble Supreme Court in Para-1 and Para-33 respectively which are quoted hereunder:

> "1. The acquisition of 73.3 hectares of dry land situate in Rangwasa village of Indore district and tehsil belonging to the appellants and others is the subject matter of challenge in these appeals filed by the land holders. The said extent of land was notified for acquisition under Section 4(1) of the Land Acquisition Act (hereinafter referred to as "the Act") for the alleged public purpose of "establishment of diamond park". This parcel of land together with an extent of 44.8 hectares of government land was meant to be placed at the disposal of the Industries Department and/or Madhya Pradesh Audyogik Kendra Vikas Nigam Ltd. (hereinafter referred to as "the Nigam") for the purpose of allotting the same to various industrial units- the foremost among them being the 9th respondent company, for setting up diamond cutting and polishing units with modern technology. The proposal in this regard emanated from the General Manager of District Industries Centre, on the initiative taken by the 9th respondent. After the land was located by a Joint Inspection Committee of the officials, the Government of Madhya Pradesh (Commerce and Industries Department) had given sanction "in principle" for the acquisition. The District Collector, Indore through his letter dated 24-1-1996 sought the approval of the Commissioner, Indore Division to invoke Section 17(1) of the Act in order to expedite the process of acquisition. In that letter, the Collector mentioned that prestigious exporters from India as well as foreign countries were likely to establish their units

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

***49.*** The name of KVK having been mentioned in the notice under Section 5-A by itself could not make the acquisition come under Part-VII of the Act, when ingredients of Part-II have been fully

satisfied. No doubt, the name of KVK has been mentioned in Section 5-A, but in the notification under Section 4 and under Section 6 of the L.A. Act, the name of the KVK has not been mentioned.

In this respect, we are of the considered view that mentioning the name of KVK in 5-A notice is essential in order to make the land owners aware of the purpose to which the land in question would be utilized. In fact, we are of the considered view that the State while not indicating the name of KVK in Section-4 and Section-6 notification, has correctly indicated the name of KVK under Section-5 notification in order to make the people who are likely land oustees aware of the actual purpose of the acquisition. In fact, we are of the considered view that, had the name of the KVK had not been indicated in the Section-5 notice, it may probably have given rise an objection being raised on behalf of the land oustees that they had not been informed as the actual purpose of acquisition. Thus the naming of the KVK Section-5 notice, was in compliance of the principle of *audi alteram partem* and not in derogation thereof.

We are of the further considered view that the acquisition in fact was made for and on behalf IDCO and consequently the name of IDCO was mentioned both in Section-4 as well as Section-6 notification and we find no error in the same. Insofar as allegation of "colourable exercise of power" in the matter of acquisition is concerned, we find no material available on record to substantiate

the aforesaid allegation. No motive had been alleged by the petitioners either to KVK or to the State Government to allege that the acquisition of land was initiated by mala fide or colourable exercise of power. It is well settled by the Hon'ble Supreme Court both in the case of **Somawanti v. State of Punjab** (supra) and **Pratibha Nema** (supra) that the conclusiveness of Section-6 declaration is open to challenge only on the ground of colourable exercise of power. It is well settled that in order to establish the allegation of mala fides and/or colourable exercise of power, the burden is on the petitioner. In the present case, apart from merely making allegation of colourable exercise of power, the petitioner had provided no material whatsoever before this Court to substantiate such allegation. It is also to be borne in mind that in the case of **Soorarama Pratap Reddy** (supra), the Hon'ble Supreme Court in paragraph-119 has came to hold as follows:

> "119. In our judgment, in deciding whether acquisition is for "public purpose" or not, *prima facie*, Government is the best judge. *Normally*, in such matters, a writ Court will not interfere by substituting its judgment for the judgment of the Government."

And consequently, we hold that the allegation of colourable exercise of power is unsubstantiated.

***50.*** Insofar as payment of compensation is concerned, the MOU entered into between the KVK and the State Government required KVK to pay the cost of the land to IDCO in case the land acquired for

the purpose. As noted hereinabove, no payments have been made by KVK to the Land Acquisition Officer and instead, IDCO has made all payments to the Land Acquisition Officer as required under Section 31(2) of the OIIDC Act read with Section 6 (second proviso) Explanation-2 to the L.A. Act.

***51.*** In the case of **Pratibha Nema** (supra), the Supreme Court held in paragraph-25 as follows:

> "**25.** It seems to be fairly clear, as contended by the learned counsel for the appellants, that the amount paid by the Company was utilised towards payment of a part of interim compensation amount determined by the Land Acquisition Officer on 7.6.1996 and in the absence of this amount, the Nigam was not having sufficient cash balance to make such payment. We may even go to the extent of inferring that in all probability, the Nigam would have advised or persuaded the Company to make advance payment towards lease amount as per the terms of the MOU on a rough-and-ready basis, so that the said amount could be utilized by the Nigam for making payment on account of interim compensation. Therefore, it could have been within the contemplation of both the parties that the amount paid by the Company will go towards the discharge of the obligation of the Nigam to make payment towards interim compensation. Even then, it does not in any way support the appellants' stand that the compensation amount had not come out of public revenues. Once the amount paid towards advance lease premium, maybe on a rough-and-ready basis, is credited to the account of the Nigam, obviously, it becomes the fund of the Nigam. Such fund, when utilized for the purpose of payment of compensation, wholly or in part, satisfies the requirements of the second proviso to Section 6(1) read with Explanation 2. The genesis of the fund is not the determinative factor, but its ownership in praesenti that matters."

And consequently, in view of the aforesaid judgment once the money is deposited by the KVK in the account of IDCO, the said money becomes part of the public fund of IDCO and payment out of public fund held by IDCO to the Land Acquisition Officer would amount to the out of public fund. Therefore, complying with the second proviso of Section 6 of the Land Acquisition Act, this conclusion is also supported by another decision of Hon'ble Supreme Court in the case of **Nand Kishore Gupta** (supra). Paragraph 61 of the said judgment is quoted hereinbelow:

> "… … This is apart from the fact that through this agreement, only the extent of the compensation payable by the company to YEIDA was decided. However, once all the amounts went to the coffers of YEIDA, it would lose its independent character as premium. When it goes into the coffers of YEIDA, it is YEIDA which would make the payments of the estimated compensation and thereby it would be as if the compensation is paid not by the Company, but by YEIDA."

***52.*** In view of the aforesaid judgment of **Nand Kishore Gupta** (supra), Hon'ble Supreme Court stated that the case for determining whether acquisition under Part-II or Part-VII of the L.A. Act, the case laid down by the Hon'ble Supreme Court in the case of **Nand Kishore Gupta** (supra) states that the basic idea for acquisition of part-VII of the Act is the "total transfer of ownership of the acquiring land in favour of the petitioner". In this respect, para-53 would be most relevant which is as follows:

> "53. This would suggest that even when the acquisition is meant for Company, the concept of public purpose has to be at the back of the mind of the acquiring body like the Government. Here, of course, there is no question of any agreement with the Company as three eventualities described under Section 40 of the Act are not available for the simple reason that the basic idea for the acquisition under Part VII of the Act is the total transfer of the ownership of the acquiring land in favour of the Company. That is obviously not present here. We do not see any factual background for holding that any agreement was contemplated in between the State Government and the Company or for that matter, YEIDA and the Company, as envisaged in Sections 39, 40 and 41 of the Act."

We are of the considered view that the aforesaid judgment in the case of **Nand Kishore Gupta** (supra) squarely applies to the fact situation which arise for consideration in the present case and clearly in the case at hand, in fact, there is no transfer of ownership of land in favour of KVK. Upon the acquisition of land, the land gets vested with the State Government and the State Government in turn grants long term lease of the said land to IDCO who in turn have sublease the land in favour of KVK in terms of the lease agreement. Consequently, it is clear therefrom that the acquisition in the present case is an acquisition under Part-II and not under Part-VII of the L.A. Act as alleged.

***53.*** Further contentions raised by the petitioners that the KVK had made certain concurrent purchase of land. In this respect, in consideration of the submissions made, we find that KVK had

purchased certain amounts of land privately through negotiation (chart has been indicated hereinabove in para-37). The fact that KVK has purchased such land after the issue of 4(1) notification under the L.A. Act, is specifically permitted under the R & R Policy, 2006 framed by the State of Orissa which is quoted hereinbelow:

> "Project proponent of for direct purchase of land on the basis of negotiated price after issue of notification requiring acquisition of land under the relevant Act. If acquisition of land through direct purchase fails, other provisions of the relevant Act may be invoked."

Therefore, the purchase of private land by the KVK after 4(1) notification is specifically encouraged by the State under the R & R policy 2006 and this fact by itself is of no consequence and has no impact on the issue as to whether the land acquired by the State Government comes under Part-II or Part-VII of the L.A. Act. The only issue as to whether "public purpose" is subserved in terms of the judgment cited hereinabove.

***54.*** The further contention of the petitioners is that IDCO would only make acquisition of land under the OIIDC Act, 1980 for the purpose of "establishing industrial estate" or "industrial area" Under Section 2(h) and 2(i) respectively is not to be considered.

Section 31 of the OIIDC Act 1980 specifically vests the power in IDCO to make requisition of acquisition of land by the State Government under the L.A. Act. In this respect, Section 14(i) which has been quoted in para-28 hereinabove clearly states the function of

the Corporation to be "generally to promote and assist in the rapid and orderly establishment, growth and development of industries, trade and commerce in the State, and sub-Section(ii) thereof says that in particular, and without prejudice to the generality of Clause-(i)". Thereafter states the various particular purposes for which acquisition can take place. In this respect, learned counsel for the IDCO's submission is that the words "in particular" and without prejudice to the generality of sub-clause(i) ought to be treated as merely illustrative and not limiting the scope of sub-clause-(i) in any manner.

***55.*** The Hon'ble Supreme Court in the case of **S.K. Singh** (supra) in relevant paragraphs-39 and 41 quoted hereunder:

> "39. Chapter IXA of the Penal Code which deals with offences relating to elections was introduced in the Code by the Indian Election Offences and Inquiries Act (XXXIX of 1920). Section 171A defines 'candidate' and 'electoral right'. An electoral right means the right of a person to stand or not to stand as, or to withdraw from being, a candidate or to vote or refrain from voting at an election. Section 171C, which deals with the offence of undue influence reads as- under:
>
> "(1) Whoever voluntarily interferes or attempts to interfere with the free exercise of any electoral right commits the offence of undue influence at an election.
>
> (2) Without prejudice to the generality of the provisions of sub-section (1), whoever
>
> (a) threatens any candidate or voter, or any person in whom a candidate or voter is interested, with injury of any kind, or
>
> (b) induces or attempts to induce a candidate or voter to believe that he or any person in whom

he is interested will become or will be rendered an object of Divine displeasure or of spiritual censure, shall be deemed to interfere with the free exercise of the electoral right of such candidate or voter, within the meaning of sub- section(1)."

Sub-section (3) lays down that:

"A declaration of public policy or a promise of public action, or the mere exercise of a legal right without intent to interfere with an electoral right, shall not be deemed to be interference within the meaning of this section."

Section 171F provides for the penalty for the offence of undue influence which is either imprisonment upto one year or with fine or both. Section 171G provides:

"Whoever with intent to affect the result of an election makes or publishes any statement purporting to be a statement of fact which is false and which he either, knows or believes to be false or does not believe to be true in relation to the personal character or conduct of any candidate shall be punished with fine."

41. We do not think that the Legislature, while framing Ch. IXA of the Code ever contemplated such a dichotomy or intended to give such a narrow meaning to the freedom of franchise essential in a representative system of government. in our opinion the argument mentioned above is fallacious. It completely disregards the structure and the provisions of s. 171C. Section 171C is enacted in three Darts. The first sub-section contains the definition of "undue influence". This is in wide terms and renders a person voluntarily interfering or attempting to interfere with the free exercise of any electoral right guilty of committing undue influence. That this is very wide is indicated by the opening sentence of sub-s. (2), i.e. "without prejudice to the generality of the provisions of sub-section (1)." It is well-settled that when this expression is used anything contained in the provisions following this expression is not intended to cut down the generality of the meaning of the preceding provision. This was so held by the

Privy Council in King-Emperor v. Sibnath Banerji, 1945 FCR 195 = (AIR 1945 PC 156)."

***56.*** In view of the aforesaid authoritative pronouncement of the Hon'ble Apex Court, we are of the considered view that sub-section(i) of Section 14 is independent and in no manner limited by the illustrations contained in sub-section(ii) of Section 14. Therefore, in terms of Section 31 of the OIIDC Act, the Corporation has invoked the authority and sought for acquisition under the L.A. Act on behalf of the Corporation and such act cannot be held to be illegal or invalid in any manner.

It is also pertinent to note herein that once the State have issued a notification under Section 4(1) of the L.A. Act, the same can also be construed as the notification for the purpose of Section 14(ii) of the OIIDC Act, inasmuch as, the same notification spells out the initiation behind acquiring the land for setting up of the industry which sub-serves "public purpose".

***57.*** Therefore, we are of the considered view that the requirement of Section 14(ii) has also been satisfied in the fact situation of the present case.

***58.*** In view of the findings arrived at hereinabove, the essential issues raised by the petitioners relate to and/or would impact on quantum of compensation which have to be taken into consideration while fixing compensation. Therefore, we are of the considered view

that the said matter can be dealt with under Sections 18 and 23 of the Land Acquisition Act and consequently we find no merit in the writ application and the challenge made to the land acquisition. Accordingly, we are of the considered view that the writ applications being devoid of any merit are liable to be dismissed and we so direct. All interim orders passed stand vacated. No costs.

**.....**
**I.Mahanty, J.**

**B.N.Mahapatra, J.** I agree.

**.....**
**B.N.Mahapatra, J**

The Orissa High Court, Cuttack
2014-KCP/RKS/PKP/RKM