REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS. 1144-1146 OF 2011

Anil Agarwal Foundation Etc. Etc. …Appellant(s)

Versus

State of Orissa and Ors. …Respondent(s)

WITH

CIVIL APPEAL NOS. 1148-1150 OF 2011

CIVIL APPEAL NOS. 1152-1154 OF 2011

CIVIL APPEAL NOS. 1161-1169 OF 2011

J U D G M E N T

M.R. SHAH, J.

1. Feeling aggrieved and dissatisfied with the impugned common judgment and order passed by the High Court of Orissa dated 16.11.2010 passed in Writ

Petition Nos. 10325 of 2008, 12948 of 2008 and 6863 of 2009 by which the Division Bench of the High Court has allowed the said writ petitions and has quashed the land acquisition proceedings in question including the notifications under Section 4(1) and 6 of the Land Acquisition Act, 1894 (hereinafter referred to as "Act, 1894") and the awards passed in the land acquisition proceedings for acquisition of lands in favour of the appellant – beneficiary company and directed that the possession of the acquired lands shall be restored to the respective landowners and on restoration of the possession to the landowners, they shall refund the amounts received by them as compensation or otherwise in respect of their lands. By the impugned common judgment and order, the High Court has also quashed the grant of Government Land in favour of the beneficiary company under Rule 5 of the Government Land Settlement Rules with a direction to the State Government to resume the lands which were granted to the beneficiary company by way of lease, the appellant – the beneficiary company and others have preferred the present appeals.

2. At the outset, it is required to be noted that before the High Court, two writ petitions were filed by the original landowners whose lands have been acquired and one writ

petition was filed by way of public interest litigation on behalf of the small landholders, who could not approach the Court and also on behalf of the people of the locality.

2.1 It is required to be noted that the dispute is with respect to the acquisition of about 6000 acres of land belonging to about 6000 families, affecting approximately 30,000 people.

3. The facts leading to the present appeals in nutshell are as under:-

3.1 That on 23.06.2006, one Mohit Kumar Rana, Principal, A.T. Kearney Limited submitted an application before the State Government stating that M/s. Vedanta Resources Limited is contemplating to set up a University in Orissa to impart education in under-graduate and post-graduate courses in Engineering, Medicine, Management, General Science and Humanities etc. It was further stated in the application that the Group had given a presentation to the Hon'ble Chief Minister of Orissa during April, 2006. That after visiting different sites in Orissa, their team have selected a site on the outskirt of Puri on the Puri-Konark marine drive to be the place ideal for establishment of the University. Therefore, it was, inter alia, prayed that the

Government of Orissa should make available 15,000 acres of contiguous land around Nuanai, in the district of Puri in Bhubneswar-Puri-Konark marine drive. It was also prayed that the Government of Orissa should also coordinate the land acquisition process by appointment of a Special Land Acquisition Officer. The Group prayed that they require 1500 acres of land for Phase-I to be acquired by September, 2006 and the balance by December, 2006. Thereafter, a Memorandum of Understanding was signed between the Government of Orissa and Vedanta Foundation on 19.07.2006. The Government of Orissa confirmed the availability of contiguous land of about 8000 acres and to make endeavour to provide an additional contiguous land and other facilities as required by the Foundation.

3.2 That a Private Limited Company incorporated in the name and style of Sterlite Foundation changed its name to Vedanta Foundation under section 25 of the Companies Act, 1956 and accordingly fresh Certificate of Incorporation consequent on change of the name was issued in July, 2004. After signing of the MOU, necessary steps were taken by the State Government for allotment of the land to the Foundation and the Vice President of the Vedanta Foundation was directed to deposit 20% of

the estimated investment cost, which was subsequently reduced to 10% and necessary direction was issued to Collector, Puri to obtain administrative approval of the project from the Higher Education Department and to produce the approval alongwith the proposal before the Government.

3.3 According to the State, in the meantime, the opinion of the Law Department was sought on the questions:-

(a) Whether the foundation is an education foundation? and

(b) Whether the land is required to be acquired for public purpose?

3.4 Thereafter the correspondences took place between the Law Department and the Revenue and Disaster Management Department. The Law Department observed that land can be acquired for the proposed educational scheme under the Act, 1894 if the appropriate Department of the Government sponsors a Scheme to carry out that. Alternatively, the land can be acquired for an educational scheme sponsored by a Society but with the prior approval of the Government. So observing, the Law Department opined that under the Act, 1894, land can be acquired for public purpose provided Government

sponsors to carry out an educational scheme or by a registered society with prior approval of the Government. Alternatively, it also opined that the Administrative Department may verify if acquisition of land can be made under section 15 of the Orissa Industrial Infrastructural Development Corporation Act, 1980. After the aforesaid opinion was received, the Administrative Department was of the view that the second option to go through IDCO was not feasible and suggested to consider as to whether the Higher Education Department will sponsor and own the project directly and whether it would be done through a Society to be framed by the Higher Education Department.

3.5 Thereafter, it was decided to explore the alternative of the Private Company to be converted into a public company on which, the views of the Law Department was again sought. The Law Department opined that the land can be acquired for a 'Public Company' under the Act, 1894 in accordance with Part VII. That Vedanta Foundation again changed its name to Anil Agarwal Foundation. On account of the name change, a fresh Certificate of Incorporation was obtained from the Registrar of Companies under Section 23(1) of the Companies Act on 06.09.2006.

3.6 In a meeting of the Board of Directors of Anil Agarwal Foundation held on 16.10.2006, a resolution was passed to change the status of the company from a private company to a public company. Anil Agarwal Foundation intimated the Department of Higher Education of the change of name and structure of Vedanta Foundation on 01.11.2006. On 24.11.2006, Anil Agarwal Foundation confirmed to the Secretary, Department of Higher Education that the status of the company had been changed from a private to a public company. The Collector, Puri, on the same day, i.e., 24.11.2006, intimated the Joint Secretary, Revenue Department regarding the change of status to a public company and also to the Department of Higher Education for revised administrative approval for acquisition of land for the establishment of Vedanta University.

3.7 That thereafter notifications under Section 4(1) of the Act, 1894 were issued between 13.12.2006 to 21.08.2007 for 6917.63 acres. The said notifications inter alia indicated that the acquisition was being conducted in terms of Chapter VII of the Act, 1894. That thereafter a declaration under Section 6 of the Act, 1894 was issued for 5619.05 acres after seeking the objections under

Section 5A of the Act, 1894. According to the appellant, after the awards were declared, the possession was delivered in respect of 3342 acres of acquired land and the sponsored 495 acres of Government land and the compensation of Rs. 41.96 crores was also disbursed.

3.8 As a vast tract of lands belonged to the poor, small farmers and the land so acquired was at a prestigious location and thousands of families of farmers were affected by the acquisition of such a vast tract of lands and that too in favour of a private company, which was mala fide subsequently converted to public company, the writ petitions were filed before the High Court challenging the entire acquisition proceedings / process.

3.9 By the impugned judgment and order, the Division Bench of the High Court has allowed the writ petitions including the public interest litigation by holding that :-

(i) the acquisition proceedings from the stage of initiation till the date of purported awards which in fact and in law not awarded and that the alleged taking over the possession of the lands is in flagrant violation of the statutory provision of Sections 4, 5A, 6, 9, 10, 11, 12, (2), 23, 24, read with the provisions under Part - VII of the Act, 1894.;

(ii) the initiation of the acquisition proceedings in favour of the beneficiary company, on the requisition made by the Vedanta Foundation by misrepresenting fact and playing fraud on the State Government, has vitiated the entire acquisition proceedings.;

(iii) that the public interest at large is affected and there is violation of rule of law.;

(iv) the Public Interest Litigation was maintainable, which was on behalf of small land holders who have no sustenance to approach this Court to fight litigation.;

(v) therefore, the acquisition proceedings in its entirety in respect of persons who have approached this Court and even who have not approached this Court are liable be quashed for the reason that there is flagrant violation of the provisions of the Act, 1894.

3.10 Thereafter, the High Court has passed the following order in terms of paragraph 69, which is as under:-

> "69. In the result, we allow the writ petitions, quash the impugned land acquisition proceedings including the notification under Sections 4(1) and 6 and the award passed in the Land Acquisition Proceedings for acquisition of land in favour of the beneficiary company and direct that the possession of the acquired lands shall be resorted to the respective land owners irrespective of the fact whether they have challenged the acquisition of their lands or not. On restoration of the possession to the land owners, they shall refund the amount received by them as compensation or otherwise in respect of their lands. We also quash the grant of Government Land in favour of the Beneficiary Company under Rule 5 of the Government Land Settlement Rules with a direction to the State Government to resume the lands which were granted to the beneficiary company by way of lease. All concerned including the State Government, the land owners and beneficiary company shall implement the aforesaid direction at an early date."

3.11 The impugned common judgment and order passed by the High Court and the operative portion of the order in paragraph 69 of judgment are the subject matter of the present appeals.

4. Shri C. Aryama Sundaram and Shri Rakesh Dwivedi, learned senior counsel appearing on behalf of the respective appellants have vehemently submitted that in the facts and circumstances of the case, the High Court has materially erred in quashing and setting aside the entire acquisition proceedings and that too even with respect to the landowners whose lands came to be acquired, did not challenge the acquisition proceedings and/or even many of them did not raise any objections under Section 5A of the Act, 1894.

4.1 Learned senior counsel appearing on behalf of the respective appellants have prayed to consider the following facts in support of their submissions that the impugned judgment and order passed by the High Court setting aside the entire acquisition proceedings is not warranted:-

(i) It is submitted that notifications under Section 4 of the Act, 1894 came to be issued between 13.12.2006 to 21.08.2007 for 6917.63 acres;

(ii) Declarations under Section 6 of the Act, 1894 were issued for 5619.05 acres, before that the

objections under Section 5A of the Act, 1894 were invited;

(iii) Only 13 landowners, who were the owner of 78.89 acres submitted their objections; with respect to 3 landowners to the extent of 25.61 acres, objections came to be accepted and 10 objections came to be rejected. None of the 10 rejectees had approached any Court with any grievance.

(iv) That the possession came to be delivered in favour of the beneficiary in respect of 3342 acres of acquired land.

(v) Possession was also delivered in respect of 495 acres of Government land.

(vi) It is submitted that therefore, the possession of total 3837 acres was handed over to the beneficiary.

(vii) That the beneficiary has already disbursed the compensation of Rs. 41.96 crores.

(viii) It is submitted that in addition to compensation, ex-gratia amount of Rs. 25.13 crores was also disbursed.

(ix) It is submitted that, thus, 3837 persons have received the compensation as above.

It is submitted that in view of the above facts and circumstances, the High Court has materially erred in setting aside the entire acquisition proceedings.

4.2 It is further submitted that there were a total of 9 writ petitioners before the High Court. One of them was an objector under Section 5A, however, his land was dropped from the land acquisition proceedings. He is, therefore, now only a pro forma party before this Court.

4.2.1 It is submitted that one of the original writ petitioners was a land loser, but not an objector under Section 5A. His land was also dropped from the land acquisition proceedings at the stage of Section 6.

4.2.2 Five of the original writ petitioners are land losers, but not objectors under Section 5A.

4.2.3 Two of the writ petitioners are PIL petitioners.

4.3 It is submitted that therefore, as on today, there are a total of 7 land losers before this Court, who hold approximately 11.52 acres, however, none of them filed objection under Section 5A. Learned senior counsel appearing on behalf of the beneficiary has stated at the Bar that the appellant is now willing to exclude their land

from the acquisition proceedings, even though they did not file Section 5A objection.

4.4 It is further submitted that in fact so far as the PILs before the High Court are concerned, the same ought not to have been entertained by the High Court in view of the earlier dismissal of PIL being Writ Petition (C) No. 6981 of 2008 which was filed by the PIL writ petitioner.

4.5 It is further submitted by the learned senior counsel appearing on behalf of the appellants that as observed hereinabove except few, none of the said land losers submitted any objections under Section 5A. It is submitted that as observed and held by this Court in the case of **Delhi Administration Vs. Gurdip Singh Uban and Ors., (2000) 7 SCC 296**, all personal nature objections are deemed to be waived.

4.6 Relying upon the decision of this Court in the case of **V. Chandrasekaran and Anr. Vs. Administrative Officer and Ors., (2012) 12 SCC 133**, it is further submitted that if the acquisition is challenged by one land loser, other cannot take advantage of it if he has not filed objection under Section 5A of the Act, 1894.

4.7 It is further submitted by the learned senior counsel appearing on behalf of the respective appellants that in the present case the acquisition proceedings have attained finality, inasmuch as, after the declaration under Section 6 of the Act, 1894 and after holding inquiry under Section 11, the awards were declared and most of the landowners were paid the compensation and even the possession to the extent of 3342 acres was handed over to the beneficiary. It is submitted that therefore, when the acquisition has attained finality, awards have been made, possession taken and compensation disbursed then setting aside the entire acquisition proceedings is not desirable.

4.8 It is further submitted by the learned senior counsel appearing on behalf of the beneficiary that though initially the lands were sought to be acquired by a private company, however, thereafter the company was converted into a public limited company after following due procedure under the provisions of the Companies Act. He has taken us to the various correspondences and the orders passed converting the beneficiary company to public limited company.

4.9 Relying upon those documents, it is vehemently submitted that therefore at the time when the Section 4 notifications were issued, the beneficiary company was already converted to a public company. Therefore, the acquisition in favour of the beneficiary company was absolutely in consonance with the provisions of the Act, 1894. It is further submitted that the acquisition of the lands in question in favour of the beneficiary trust/ company was after a detailed consultation and taking into consideration the object and purpose of the trust / company in the field of education etc. It is submitted that the beneficiary company / trust wants and/or desirous of establishing a very renowned university in the State of Orissa.

4.10 It is further submitted by the learned senior counsel appearing on behalf of the beneficiary company that if the impugned judgment and order passed by the High Court is not interfered with by this Court, there shall be serious and adverse impact in implementing the appellant's project.

4.11 It is submitted that the appellant – beneficiary has drawn up a Vision Plan for over 3837 acres of land, which is currently in their possession. It is submitted that the

Vision Plan postulates a University catering to 1,00,000 students and the University would be built in a phased manner. It is submitted that in Phase I, colleges in the field of Medicine, Liberal Arts, Science & Technology, Agriculture and Food Processing and Institute of Design would be started.

4.12 It is submitted that eminent academicians are already on the advisory/academic board of the project. It is further submitted that adequate safeguards have been provided in Section 41 agreement that the land would be utilized for the University, and in case any portion of the land is not utilized for the University purpose, then the said portion reverts to the State Government.

4.13 It is further submitted by the learned senior counsel appearing on behalf of the respective appellants that even after the acquisition of the lands in question, the rehabilitation measures have been taken as per the policy of the State Government, which are as under:-

> "1. R&R Policy of State Govt. followed whereunder an R&R Colony of 65.17 acres within the acquired land has been set apart to accommodate the 230 displaced families. It may be noted that site of the R&R Colony has been

chosen by the displaced families themselves.

2. The project affected families are entitled to a preference for employment in the University.

3. Appellant has agreed to appoint one graduate from all land losing families as an employee.

4. Appellant has agreed to engage landless agriculture labourers as unskilled construction workers. In the event the same is not provided, then a subsistence allowance of Rs. 1500 per month would be paid to each family from date of possession to 2010.

5. Appellant has agreed to bear the expenditure for students from land losing families to study at DAV School, Puri."

4.14 It is further submitted by the learned senior counsel appearing on behalf of the appellants that in the present case, there is a compliance of Part VII of the Act, 1894 and the Land Acquisition (Companies) Rules, 1963 (hereinafter referred to as "Rules, 1963"). It is submitted that in the present case, Part VII has been complied with as under:-

"1. Part VII has been complied with as:

(i) Section 39/40 consent has been given by the State Government.

(ii) Enquiry under Section 40(2)/ Rule 4 has been carried out.

(iii) Agreement has been signed by the Foundation as mandated under Section 41.

(iv) Section 44B not applicable since the Appellant is a public company."

4.15 It is further submitted that insofar as Rules, 1963 are concerned, it is the case on behalf of the appellant that a Rule 4 enquiry is relevant only in the case when the land is identified by the company and not by the State Government and thereafter an application is made by the company to acquire the said identified land. It is submitted that in the present case, the land was not only identified by the State Government (and, therefore, not by the appellant beneficiary), but done so after substantially undertaking the enquiry as envisaged under Rule 4. In support of his above submission, Shri C. Aryama Sundaram, learned senior counsel appearing on behalf of the appellant trust / beneficiary has prayed to consider the following dates and events:-

"(i) April 2006- A presentation was made by Vedanta Resources Ltd. to the

Chief Minister of Odisha for setting up of a University in Orissa. (**Note**: No Particular land identified by Vedanta in this presentation)

(ii) April-June, 2006 - It was known to the State Govt. that the Vedanta group had made similar representations to few other States as well. Since the proposal presented a huge opportunity for the State, it started the process of identifying suitable locations on its own, under the leadership of its top officers, i.e. the Chief Secretary, and carried out a detailed inquiry towards identifying land keeping in mind the considerations under Rule 4

(iii) After looking at various options, the State Govt. finally zeroed in on Puri.

(iv) 16.06.2006- The Office of the Chief Minister of Orissa convened a meeting of Secretaries of various departments in relation to the establishment of the University. At the meeting, State Govt. made a detailed presentation to the Appellant on the land identified by it in Puri. In the said presentation, considerations regarding the suitability of the land, the extent thereof, the habitation thereunder etc. have been considered in detail. [**Note**: this also shows Compliance with Rule 4(1)(i) and (iii)]

(v) 23.06.2006 - Pursuant to the aforesaid presentation by the State, the Appellant made independent visits to the site proposed in the presentation. On this basis, a letter was written to the Office of the Chief Minister by AT Kearney (a Consultant appointed by Vedanta) stating that Vedanta was interested in setting up a University in Puri.

(vi) 26.06.2006- as per direction of the State Government, the Addl. District Magistrate, Puri and the Tahasildar, Puri made further visit to the project area.

(vii) During the aforesaid exercise:

a) Addl. District Magistrate, Puri and Secretary, Works also made aerial survey of the site. [**Note**: this also shows Compliance with Rule 4(1)(i)]

b) Number of informal group meetings in the village between the Collector and other State Govt. officers before the acquisition proceedings were initiated. This was done to discuss various aspects of land acquisition including suitability of land, and to appraise the villagers of the purpose of land acquisition; [**Note**: this also

shows Compliance with Rule 4(1)(i) and (iii)]

c) Visits were also made for the purpose of ascertaining that minimum displacement was taking place out of the one various alternative locations

d) Determination was also done to see that the Appellant is able to utilize the land, which were frozen, expeditiously; at various reviews, the requirement of land was scaled down to 6000 acres; [**Note**: this also shows Compliance with Rule 4(1)(iv) and (v)]

e) Exercise was also undertaken to find out that the land is rain fed; not irrigated; not much good quality of agricultural land; inferior, unproductive and fallow land. [**Note**: this also shows Compliance with Rule 4(1)(vi)]

f) Most of the land oustees of the project area were contacted either in meetings by the Appellants to make negotiations for payment of reasonable price. [**Note**: this also shows Compliance with Rule 4(1)(ii)]

(viii) 19.07.2006 - after being satisfied about the direct and indirect benefits to be accrued to the state, an MoU was signed to establish the proposed university. [**Note**: Compliance with Rule 4(1)(v)], namely, determination to ensure that the Appellant is able to utilize the land expeditiously

(ix) 09.08.2006- The State Govt. appointed a Special LAO & special officer for R&R in order to coordinate the land acquisition process.

(x) 29.11.2006 - the State Government, upon being satisfied, has accorded Administrative Approval for the project.

(xi) Minutes of the 7 Core Committee meetings between 02.09.2006 and 07.02.2008 also record substantial compliance of Rule 4."

4.16 It is further submitted that therefore, there is a compliance with Rules 3(1) and 3(2). It is submitted that even the Rule 4 has been complied with subsequently.

4.17 Learned senior counsel appearing on behalf of the State Government has vehemently submitted that in the present case, there is a compliance of Sections 4, 5A, 6, 9, 11 and 12 of the Act, 1894. It is prayed to consider the following dates and events in support of compliance of the

State Government with the provisions under the Act, 1894, which are as under:-

> "1. Notification under Section 4(1) has been published in the Official Gazette, and in two daily newspapers circulating in that locality and the Collector has used public notice of the substance of Notification u/s.4(1) by way of beating of drums at convenient places in the locality under Sec.4(1)
>
> 2. No provision in the Act for serving show cause notice to the interested persons for inviting objections u/s. 5A. The same is a requirement in Karnataka because of a State Amendment to the LA Act, 1894 Unfortunately, the same has been applied by the High Court vide the impugned judgment even though Orissa has no such requirement.
>
> 3. 13 objection petitions received from 6 villages for an area measuring Ac 78.89. The Spl. Land Acquisition Officer has given notice to the objectors for hearing u/s 5-A. Heard the petitioners. Has forwarded the objection petitions to Govt. in the Revenue Department through the District Collector together with his report and the record of the proceedings. In fact, 3 of the 13 objections were allowed (25.61 acres).

None of the 10 rejectees approached any Court with any grievance.

4. State Govt. has given public notice of declaration under Section 6(2).

5. The Collector has served notices u/s. 9 (1) in the village and to the interested persons u/s. 9(3) calling upon them to file claims to compensation, as evident in the LA records.

6. After making enquiry into their respective interests, claims to compensation and objections to the area, which the interested persons have stated pursuant to the notices u/s. 9, the Collector u/s. 11 has passed Award on the true area of the land, the compensation allowed and the apportionment of compensation.

7. In addition to compensation under the LA Act, 1894, ex-gratia amount of Rs. 1 lakh per acre subject to a minimum compensation of Rs. 2 lakh acre was to be paid as approved by the RPDAC (formed as per the State R&R Policy). **This is in addition to various other benefits to be provided, which have been enumerated at (I).B of this Note at Page 3 above.**

8. Collector has given notice of his Award to such interested persons u/s. 12(2) of the LA Act 1894, as evident in the LA records."

4.18 It is further submitted by the learned senior counsel appearing on behalf of the appellants that in fact the project does not fall in any prohibited area. It is beyond the coastal regulatory zone. The distance of the sea from the proposed Vedanta University is more than 2000 meters. The Balukhand Wildlife Sanctuary is separated from the proposed site by a highway / Puri-Konark Marine Drive. It is submitted that the Sanctuary is on the seaward side, whereas the proposed site is on the landward side.

4.19 It is submitted that there are a number of private institutions and organizations which are on the same side of the highway as the proposed university, along with the entire village of Beldala with a large population. It is submitted that Nuanai which flows through the proposed site is not a river as alleged. It is submitted that it comprises of two man-made channels (Gabakund Cut and Siar Cut). It is submitted that the land was acquired by the State Government for constructing these channels. The ownership of these two channels continues to lie with the Water resources Department of the Government of Orissa. It is submitted that in any event, all environmental requirements would be scrutinized and

looked into by the MOEF while granting environmental clearance.

4.20 Learned senior counsel appearing on behalf of the respective appellants have taken us to the findings by the High Court and their response, which by and large have been refereed to hereinabove.

4.21 Making above submissions, it is prayed to allow the present appeals.

5. Present appeals are vehemently opposed by Shri Prashant Bhushan, learned counsel appearing on behalf of the respective respondents – original writ petitioners.

5.1 It is submitted that the instant case involves acquisition of about 6000 acres of land belonging to about 6000 families, and thus, involving displacement of approximately 30,000 people. It is submitted that the Government of Orissa has showered huge largesse on the appellant company by acting in a manifestly arbitrary manner and flouting all the mandatory provisions of the Act, 1894 and the Rules, 1963 by pre-determining the acquisition of the concerned land in favour of the appellant company. It is submitted that the said illegal action of the Government of Orissa gives rise to sufficient

cause for espousal of public interest. It is submitted that the action of the State in allotting such a huge tracts of land admeasuring 6000 acres and that too in the prime location, which was nothing but a clear case of favourism and arbitrariness, which has been rightly set aside by the High Court.

5.2 It is submitted that the land acquisition proceedings including the notifications under Sections 4(1) and 6 and the awards passed in the land acquisition proceedings for acquisition of land in favour of the beneficiary company have rightly been quashed by the Hon'ble High Court by the impugned judgment and order, which does not require any interference of this Court in exercise of the powers under Article 136 of the Constitution of India.

5.3 It is submitted by the learned counsel appearing on behalf of the original writ petitioners – original landowners / land losers that in the present case the land was identified by the appellant company, and not by the Government as is evident from the chronology of dates and events and the Note Sheet of the Principal Secretary of the Chief Minister. It is submitted that the Note sheet clearly shows, inter alia, that the appellant company asked the Government of Orissa to specifically make

available for it 15,000 acres of contiguous land around Nuanai, Puri district in Bhubaneshwar-Puri-Konark by 15.06.2006.

5.4 It is submitted that even the relevant clauses in the Memorandum of Understanding (MoU) dated 19.07.2006 also show that the land was identified by the Company and not by the Government. It is submitted that as per the MoU dated 19.07.2006, it was Vedanta Foundation that proposed to set up the university along with a self-contained township near Puri in Orissa with an estimated cost of Rs. 15,000 crores. It is submitted that in the said MoU also there was a refence to the proposed location. It is submitted that the Government of Orissa just confirmed the availability of the contiguous land of about 8000 acres. [Clause 5 of the MoU]

5.5 It is submitted that even, the Section 41 agreement executed between the Government of Orissa and the Anil Aggarwal Foundation also shows that the land was identified by the company and not by the Government as the said agreement says that the Company intended to establish Vedanta University near Puri and had applied to the Government of Orissa for the acquisition of the land described in the schedule thereunder, written and

delineated on the map annexed therein whereon the company intended to establish Vedanta University.

5.6 It is further submitted by the learned counsel appearing on behalf of the original writ petitioners – original landowners / land losers that the Government of Orissa, despite knowing fully well that the Vedanta Foundation had no prior track record in the field of education, included several clauses in the MoU dated 19.07.2006, providing undue largesse to Vedanta like total autonomy to Vedanta University and its authorities with regard to administration, admission, fee structure, curriculum and faculty selection; proposed university to have complete immunity from any reservation laws of the State Government, all assistance in getting regulatory approvals from UGC, AICTE etc. It is submitted that even, as per the said MoU, the Government agreed to provide 4-lane road from Bhubaneshwar city to the proposed site and the Government of Orissa shall make the land use/ zoning plan in the 5 km radius from the university boundary only after Consultation with Vedanta. It is submitted that the Government also promised to exempt all state levies/ taxes/ duties namely, viz. VAT, Works Contract Tax, Stamp Duty and Entry tax on R&D equipment, educational aids, lab equipment and tools,

and construction materials from the date of signing of the MoU. It is submitted that the Government also promised to assist the Foundation in obtaining NOC from SPCB and all clearances from the Central Government. It is submitted that the Government also promised to assist the Foundation in arranging rapid EIA and EMP for the project. It is submitted that the Government also promised to provide extraordinary huge amounts of electricity and water. It is submitted that the aforesaid role of the Government shows clear favourism in favour of a private trust / company – Vedanta Foundation.

5.7 It is submitted that the Government of Orissa didn't apply its mind regarding the genuineness of the appellant company's demand of 10.000 acres for building the campus. It is submitted that it is to be noted that one of the largest universities in the world - Stanford University has lesser contiguous area of around 8,100 acres. It is submitted that in the present case, the Government of Orissa confirmed the availability of 8000 acres and promised to provide additional contiguous land as required by the appellant Company. It is submitted that at the relevant time, the Foundation was a private company with 3 members of a family and limited by guarantee of Rs. 5,000/-, and no prior track record in education sector.

It is submitted that while accepting the request by the Vedanta Foundation, the Government did not consider the prior track record and did not consider why the Vedanta group has been repeatedly indicted by various Governments / authorities / courts/tribunals and agencies for severe violations of mining laws, environmental laws, causing pollution, and violation of human rights in its mining projects in Orissa, Tamil Nadu, Goa and Karnataka.

5.8 Taking us to the observations made by the High court made in paras 63 to 67 of the impugned judgment, it is submitted that the High Court has given cogent reasons and findings to hold that the land acquisition proceedings were carried out by the Government in a manifestly arbitrary manner and had defeated the public interest. It is submitted that therefore, the High Court has rightly entertained the Public Interest Litigations holding that the initiation of the acquisition proceedings in favour of the beneficiary company, on the requisition made by the Vedanta Foundation by misrepresentation of facts and by playing fraud on the State Government, which has vitiated the entire acquisition proceedings. It is submitted that the High Court has rightly observed and held that the public

interest at large is affected and there is violation of rule of law.

5.9 Insofar as the submission on behalf of the appellant that only 7 people filed section 5A objections out of approximately 6000 people, who were losing their lands is concerned, it is submitted that the fact that only 7 people filed their objections itself shows that the landowners were either unaware of the land acquisition proceedings and/or were too weak, poor and disadvantaged and not in a position to even file objections with the Collector. Relying upon the decisions of this Court in the case of **S.P. Gupta Vs. Union of India, 1981 Supp SCC 87**; **Bandhua Mukti Morcha Vs. Union of India, (1984) 3 SCC 161** and **Public Union for Civil Liberties Vs. State of T.N., (2013) 1 SCC 585**, it is submitted that the High Court has rightly entertained the Public Interest Litigation petitions and has rightly quashed the entire acquisition proceedings. It is submitted that the High Court has rightly entertained and allowed the Public Interest Litigation petitions as by the acquisition of such a huge tract of land to the extent of 6000 acres, affecting 30,000 people, who were too weak, poor and disadvantaged, who could not approach the court for legal redress.

5.10 It is submitted that apart from Public Interest Litigations, the land losers had also challenged the acquisition. It is submitted that in the present case, the High Court has rightly quashed the entire acquisition proceedings. It has been found that the Hon'ble Courts in various cases have repeatedly quashed entire acquisitions where illegalities go to the root of the matter. It is further submitted that even as rightly observed and held by the High Court, the entire acquisition proceedings were suffering from arbitrariness and in Violation of the Act, 1894 and the statutory Rules in the land acquisition process.

5.11 It is submitted that the appellant is a private company, and not a public company. It is submitted that admittedly, the appellant claims that it was a private company registered under Section 25 limited by guarantee with a license issued by Central Government. However, according to the said license itself, any change to Articles of Association is required to be approved by the Central Government. It is submitted that herein, the resolution, dated 23.11.2006, altering the Articles of Association by the appellant to convert it into a public company and increasing the members to 7 was not approved by the Central Government as per the License

issued to it under Section 25 and hence, the company never became a public company. It is submitted that the aforesaid is evident even from the affidavit filed on behalf of the Registrar of Companies filed before the High Court. He has taken us to the relevant paragraphs namely paragraph Nos. 9, 10 and 12 of the affidavit filed by the Registrar of Companies dated 15.10.2008 filed before the High Court. It is further submitted that the reliance of Vedanta on the letter dated 22.11.2006 from the Ministry of Company Affairs is not any evidence of the company becoming a public company. It is submitted that it merely says that Vedanta's "request for permission under Section 25(8) of the Companies Act 1956 is hereby considered of conversion of the status of the Company from Private to a Public Company". It is submitted that the same was subject to compliance of the provisions of Sections 23, 31, 189(2) and 192 of the Companies Act, 1956, which are not complied with at all.

5.12 It is submitted that that is why Articles of Association have not been produced before the Core committee of the Government without which no one could understand the nature of the company. It is submitted that the nature of company, i.e., whether it is public or private depends upon the nature of holding of shares. It is submitted that if the

members hold the shares jointly, then as per the proviso to Section 3(c) of the Act, 1956, they shall be treated only as a single member. Further, Section 12(5) of Act, 1956 as to the accountability of its members could not be ascertained even for Section 25 registered company. Accordingly, the members, as can be seen from Board Meeting minutes, all the Agarwals seem to hold the company jointly, and therefore, it could only be a private company.

5.13 It is submitted that, however, in appellant's letter dated 10.02.2011, the appellant admitted that they don't have any shares and is a company registered on guarantee under Section 25 of the Act, 1956. It is submitted that when there being no shares, the pattern of holding the shares jointly or severally cannot be ascertained and hence the company could only be a private company.

5.14 It is submitted that even in the agreement executed on 31.07.2007, the appellant company mentions itself only as a company but do not state itself to be a public company. It is submitted that even the appellant failed to file prospectus or statement in lieu of the same in Schedule IV as mandated under Section 44 of the Act,

1956. It is submitted that Schedule IV warrants disclosure of interest of each director in the company and share holding pattern, without which it is not possible to ascertain the nature of company. It is submitted that as public company is any company other than a private company, share holding pattern is a must to examine the compliance of proviso to Section 3(c) of 1956 Act.

5.15 It is submitted that a public company shall, in the context of Act, 1894, require provision in the Articles of Association enabling any public to purchase shares to remove the basis of private company. It is submitted that the scope of Section 44B should be understood on its intention. A company constituted by three family members cannot be legally accepted as a public company if its members are increased to 7 numbers by adding sons and daughters. It is submitted that therefore, the phrase "public company" should be construed by taking into consideration the scope and purport of Section 44B of the Act, 1894. It is submitted that that is why an enquiry is contemplated under Section 40 and the Rules framed therefor.

5.16 It is further submitted that even Clause 13 of the Section 41 Agreement mandates not to pay more than

2/3rd, i.e., 66.66% of the compensation worked out which is in blatant violation of Section 17(3A) (3) which mandates to pay 80% of the compensation. It is submitted that even for public purpose, the Act mandates to pay 80% before entering / taking possession, but for private company, the aforesaid Agreement mandates not to pay more than 66.67% which is impermissible.

5.17 It is submitted that even Section 41 Agreement was executed on false premise as no such enquiry as mandated under Section 40 of the Act, 1894 r/w Rules, 1963 was conducted. It is submitted that therefore Section 41 Agreement was a fraudulent exercise of power to give undue favour to the appellant.

5.18 It is further submitted that even otherwise, admittedly, at the time of execution of MoU with the Appellant on 19.07.2006, the appellant was a private company and hence, the proposal ought not to have been entertained at all but should have been rejected outrightly. It is submitted that however, the Government showed undue interest and the entire Government Machinery worked hastily and acquired the lands using emergency provision, i.e., Section 17 of the Act. It is submitted that even on 30.07.2007, the company was not a public

company. Therefore, entering into MoU/ Agreement with the appellant, a private company, which formed the basis for land acquisition is violative of the statutory bar under Sections 40(1)(aa) and 40(1)(b) and 44-B and hence, void ab initio.

5.19 It is further submitted that the appellant's reliance on Collector's letter, dated 25.07.2008, which was after the Section 6 notification, is untenable. It is submitted that the inquiry and report of the Collector had to proceed before the Section 6 notification. It is further submitted that even no inquiry was conducted under the Rules, 1963, which has been established and proved from the response by the Special Land Acquisition Officer to the RTI query dated 27.05.2008. It is submitted that in response to the said RTI query, the Special Land Acquisition Officer has responded that; "There was no such inquiry under Land Acquisition (Companies) Rules, 1963".

5.20 It is further submitted that even in the present case, no Committee / Core Committee was constituted by the State Government from among the persons notified under sub-rule (2) of Rule 3 and clauses (i) and (ii) of the Rules.

5.21 It is submitted that in the present case, the 'Core Committee' constituted by the Department of Higher Education, Government of Orissa vide the notification dated 17.08.2007, was setup for the expressly stated purpose of "coordinating activities relating to lease of Government land and acquisition of private land, facilitating rehabilitation of displaced families as per policy, expediting accreditation from relevant statutory bodies as UGC AICTE, MCI, BCI etc. enactment of an Act for the University, facilitating issues of no objection certificate from State Pollution Control Board and other bodies and expediting provision of road, water, electricity and telephone connectivity required for the University, etc." It is submitted that the scope, composition and purpose for establishment of the aforesaid Core Committee is completely different from the scope. composition and purpose of the Land Acquisition Committee envisaged under Rule 3 of the Rules, 1963. This is because while the Land Acquisition Committee is required to be established for assisting the government in evaluating the feasibility and desirability of the proposal from a company for land acquisition, the Core Committee was set out with the objective of facilitating the land acquisition process with the Government of Orissa having already pre-

determined the feasibility and desirability of the acquisition in clear contravention of the statutory provisions.

5.22 It is submitted that the appellant's argument that enquiry under Rule 4 of the Rules, 1963 was not required / relevant in the present case as the land was identified by the Government and not by the company, does not hold water. It is submitted that in the present case, the land had clearly been identified by the appellant company since the very inception. It is submitted that even otherwise, whether the land is identified by the company or the Government, the statutory Rule 4 cannot be dispensed with at all and the collector is bound to inquire into all the things mentioned in Rule 4 of the Rules, 1963, otherwise the whole purpose of the Rules, 1963 and Part VII of the Act, 1894 will be defeated. It is further submitted that even the declarations under Section 6 of the Act, 1894, for most of the villages were made prior to the agreement under Section 41 of the Act was executed. It is submitted that the same is in complete contravention and breach of Rule 4 (4)(ii) of the Rules, 1963, which provides that no declaration shall be made by the appropriate Government under Section 6 of the Act unless the agreement under section 41 of the Act has been executed by the company. It is submitted that even

the same is also in clear violation of Section 39 of the Act, 1894 which stipulates that the provisions of Sections 6 of the Act, 1894 shall not be put in force in order to acquire the land for any company unless the Company has executed the agreement under Section 41 of the Act, 1894. It is submitted that therefore, as rightly observed and held by the High Court that the entire land acquisition proceedings is void and hence all consequential proceedings were also void ab initio.

5.23 It is further submitted by the learned counsel that in the present case, right from the very beginning and from the time of signing of the MoU, the Government of Orissa had made its mind that the land will be available to Vedanta even though the mandatory requirements of Act, 1894 and the Rules, 1963 were yet to be complied with, which might have led to the possible failure of the acquisition as the enquiries provided therein are meant to exclude acquisition of lands if certain mandatory requirements are not met with.

5.24 Shri Prashant Bhushan, learned counsel has heavily relied upon the decisions of this Court in the case of **Devinder Singh Vs. State of Punjab, (2008) 1 SCC 728** and **City Montessori School Vs. State of U.P., (2009) 14**

SCC 253 in support of his submission that as observed and held by this Court Part VII of the Act, 1894 and the Rules, 1963 require strict compliance. It is submitted that in the present case, all the procedures and the requirements of Part VII of the Act, 1894 and the relevant Rules, 1963 are not complied with.

5.25 It is further submitted by Shri Prashant Bhushan, learned counsel that in the present case, the inquiry and the objection under Section 5A of the Act, 1894 have not been properly complied with and/or adhered to. It is submitted that it was absolutely critical for the Collector to have properly heard the objections from the affected people in accordance with Section 5A in relation to desirability of the proposed project, irrespective of the number of objections received and should have made a report in accordance thereof. It is submitted that in the present case, the said procedure has not been followed by the Collector.

5.26 It is further submitted that even otherwise the impugned land acquisition is in violation of environmental norms. It is submitted that the acquisition of the lands in question in favour of the beneficiary company, is bad in law in view of the fact that by Gazette Notification dated

23.04.1984 published by the State Government, the nearby area of the acquired lands has been declared as Wildlife Sanctuary and two rivers, namely, "Nuanai' & 'Nala' are flowing in the acquired lands according to the satellite map issued by the Forest Department. It is submitted that the control of the said rivers will be under the said private company if the acquisition proceedings are held to be valid in law thereby the doctrine of public trust as held by this Court will be violated. It is submitted that in the case of **Common Cause, A Registered Society, (1999) 6 SCC 667,** this Court held that natural resources such as air, water, forest, lakes, rivers and wildlife are public properties entrusted to the Government for their safe and proper use and proper protection and the doctrine enjoins upon the Government to protect the resources for the enjoyment of the general public rather than to permit their use for private ownership or commercial purposes. It is submitted that even vast tract of lands belonging to the State Government including Gochar lands, on the basis of requisition made for Vedanta Company, had been de-reserved and divested from the purpose for which it was reserved and had been made available for grant in favour of the beneficiary

company by way of lease. It is submitted that even the proper procedure has not been followed for grant of lease.

5.27 It is further submitted that even the subsequent conversion of a private company to public company was mala fide action/act. It is submitted that the entire exercise was hurriedly done to convert the appellant company from private to purportedly public company after it was already decided to acquire land for it and after the Law department during acquisition proceedings observed and opined that the land may be acquired only for a public company and thereby hurriedly the Articles of Association and Memorandum of Association were changed in violation of the conditions of the license granted to the appellant company and without first informing the concerned authority of the change, which shows that the exercise was expressly taken up to defeat the object of Part VII of Act, 1894. It is further submitted that currently the possession of land is still with the landowners and most of whom are agriculturists and their agricultural lands acquired are the only source of livelihood. It is submitted that in the present case, as submitted hereinabove, approximately 6000 families and 30,000 people are likely to be affected, if the land is taken away,

then it will cause them great hardship which can never be compensated in monetary terms.

5.28 Making above submissions, it is prayed to dismiss the present appeals.

6. Having heard the learned counsel for the respective parties and on going through the impugned judgment and order passed by the High Court, it appears that while quashing and setting aside the entire land acquisition proceedings, the High Court had in fact identified 15 issues, which are as under:-

Issues
Issue No. 1 Whether the Anil Agarwal Foundation, The Beneficiary Company, is a public company in terms of the definition under section 3(1)(IV) of the Companies Act, 1956 and can the private guarantee limited company be converted to public company under section 25 of the Companies Act?
Issue No. 2 Whether the State Government can acquire the lands in question in favour of the beneficiary company in exercise of its eminent domain power for the purpose of establishment of the proposed Vedanta University (not in existence) in view of Section 44-B of the Land Acquisition Act, 1894?

Issue No. 3 Whether the State Government on the requisition of Vedanta Foundation could have initiated the acquisition proceedings in favour of the beneficiary company by issuing notifications under Section 4(1) of the LA Act without complying with the mandatory provisions of Section 39, 41 and 42 of the Land Acquisition Act read with Rules 3(2) and 4 of the Land Acquisition (Companies) Rules, 1963?
Issue No. 4 (A) Whether the Collector was required to conduct an inquiry as contemplated under Section 5-A of the Land Acquisition Act even in the absence of filing objections to the show cause notice along with preliminary notification proposing to acquire the lands of the land owners/interested persons in favour of a beneficiary company? and (B) Whether the Collector was required to submit his report to the State Govt. in relation to certain matters as referred to under Clause (1) of Rule-4 as it is mandatory for further action under Section 6 of the LA Act, 1894 in view of the fact that the acquisition will entail serious civil consequences of the owners of the lands?
Issue No. 5 (A) Whether the owners/ interested persons of the land in question have waived or acquiesced their rights for not filing objections to the preliminary notifications?

And (B) Whether there is any delay and latches in these writ petitions and for that reason they are not entitled to the relief as prayed in these writ petitions?
Issue No. 6 & 7 6. Whether the Core Committee appointed by the State Govt. is in compliance with the provision under Section 40, sub section (2) of the LA Act, 1894 and it has conducted an inquiry and submitted its report to the State Govt. for its consideration and compliance of the above provisions of the Act can dispense with the Rules 3 & 4 of the Land Acquisition (Companies) Rules, 1963 for declaration under Section 6 of the LA Act? and 7. Whether the State Government has complied with Rules 3(2) and 4 of the Rules, 1963 and the Collector has submitted his report to the State Government and the same is forwarded to the Committee constituted for this purpose and whether it has consulted the Committee before declaring the lands notified & published under Section 6 notifications?
Issue No. 8 & 9 8. Whether the beneficiary company has executed Memorandum of Understanding as required under Section 41 of the Land Acquisition Act with the State Government giving undertaking as provided under sub

sections (1), (2) & (3) of the said section of the Act and the same is published in the official gazette as required under Section 42 thereof? And 9. Whether the Memorandum of Understanding dated 19/07/2006 executed by the beneficiary company can be construed as a valid agreement as provided under Section 41 of the LA Act for acquiring the lands in question in favour of the beneficiary company?
Issue No. 10 Whether the Collector has determined approx. amount of compensation to be awarded and deposited as required under the provisions and by following the procedure as provided under Section 23 and 24 of the LA Act?
Issue no. 11 Whether awards are passed by the Collector in compliance with Sections 9, 10 and 11 of the LA Act and award notices as required under Section 12 (2) of the Act are issued and served upon the owners/interested persons and thereafter possession of the lands has been taken by the State Government under Section 16 of the LA Act and transferred in favour of the company?
Issue No. 12 (A) Whether the impugned notifications acquiring the lands in the locality is legal and valid, as certain lands of them are declared for Wildlife Sanctuary according to Gazette notification dated 23.4.1984 and two rivers

viz. “Nuanai" and "Nala" are flowing in the lands in question according to satellite map issued by the Department of Forest, would it affect the ecology and environment in the locality?

And

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

Issue Nos. 13, 14 & 15

13. Whether the PIL must succeed if the question Nos. 12(A) & (B) are answered in favour of the appellants and for violation of any provisions of Land Acquisition Act as well as Land Acquisition (Companies) Rules, 1963?

And

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

15. What relief petitioners are entitled?

7. After elaborate consideration on the aforesaid issues, the High court has answered the respective 15 questions as under:-

Issues	**Findings / Answers given by the High Court**
Issue No. 1 Whether the Anil Agarwal Foundation, The Beneficiary Company, is a public company in terms of the definition under section 3(1)(IV) of the Companies Act, 1956 and can the private guarantee limited company be converted to public company under section 25 of the Companies Act?	i) As per the details mentioned in Form No. 32 filed on 19.07.2006, the Petitioner has only 3 directors on its board and less than 7 members, which is less than what is required for a public limited company under Section 12 (b) of the Companies Act, 1956. ii) The Petitioner had tried to change its status from a private to a public company but the same was subject to compliance of Sections 23, 31, 189 (2) and 192 of the Companies Act, 1956. The Petitioner had not furnished certified copy of the memorandum and articles of association as

	required under the provisions of Section 31 (2A) and had therefore not acquired the status of a public company. iii) The Foundation is a section 25 company, and therefore not a public limited company.
Issue No. 2 Whether the State Government can acquire the lands in question in favour of the beneficiary company in exercise of its eminent domain power for the purpose of establishment of the proposed Vedanta University (not in existence) in view of Section 44-B of the Land Acquisition Act, 1894?	i) Acquisition of lands for a private company is not permissible except for the purpose mentioned in Section 40(1)(a) of the Act as stated under Section 44-B of the Act. Therefore, the acquisition in question is illegal. ii) The University in question is non- existent as no University has come into existence under the University Grants Commission Act, 1956 or under the Orissa Universities Act. iii) The State Government has promulgated an Ordinance to establish an University which is untenable in law.

Issue No. 3 Whether the State Government on the requisition of Vedanta Foundation could have initiated the acquisition proceedings in favour of the beneficiary company by issuing notifications under Section 4(1) of the LA Act without complying with the mandatory provisions of Section 39, 41 and 42 of the Land Acquisition Act read with Rules 3(2) and 4 of the Land Acquisition (Companies) Rules, 1963?	i) Section 4(1) notification in favour of the beneficiary company were made on the basis of a requisition filed by Vedanta Foundation, but not Anil Agarwal Foundation, which is the beneficiary company. ii) No enquiry has been made by the State Government in terms of Rule-4 read with Rule 3 of the Land Acquisition (Companies) Rules, 1963 iii) Acquisition of lands by publishing Section 4(1) Notifications in favour of the beneficiary company is vitiated in law for the reason that before putting the provisions of Section 4 to 16 and 18 to 37 in order to acquire land no previous consent of the State Government under Section 39 was there and such consent shall not be given unless the

	company has executed the agreement under Section 41 of the Act. iv) Declaration under Section 6 has been made by the State Government without consulting the Land Acquisition Committee to be constituted under Rule- 3 of the Land Acquisition (Companies) Rules, 1963.
Issue No. 4 (A) Whether the Collector was required to conduct an inquiry as contemplated under Section 5-A of the Land Acquisition Act even in the absence of filing objections to the show cause notice along with preliminary notification proposing to acquire the lands of the land owners/interested persons in favour of a beneficiary company? and	i) The order sheet of the records maintained by Collector discloses that the Collector has not caused public notice, by way of beat of drums, of the substance of such notification to be given at convenient places in the locality. ii) No notice along with the preliminary notification was issued and served upon either to the owners/ interested persons of the acquired lands as required in law. Therefore, the question

(B) Whether the Collector was required to submit his report to the State Govt. in relation to certain matters as referred to under Clause (1) of Rule-4 as it is mandatory for further action under Section 6 of the LA Act, 1894 in view of the fact that the acquisition will entail serious civil consequences of the owners of the lands?	of filling of objections by the land owners interested persons didn't arise. iii) The Collector has not submitted report under Section 5-A of the Act or Rule 4 of the Land Acquisition (Companies) Rules, 1963.
Issue No. 5 (A) Whether the owners/ interested persons of the land in question have waived or acquiesced their rights for not filing objections to the preliminary notifications? And (B) Whether there is any delay and latches in these writ petitions and for that reason they are not entitled to the relief as prayed in these writ petitions?	i) Enquiry under Section 5A is mandatory whether or not the land owner makes an objection in writing ii) This point has not been answered by the Hon'ble High Court.
Issue No. 6 & 7	Declaration under

6. Whether the Core Committee appointed by the State Govt. is in compliance with the provision under Section 40, sub section (2) of the LA Act, 1894 and it has conducted an inquiry and submitted its report to the State Govt. for its consideration and compliance of the above provisions of the Act can dispense with the Rules 3 & 4 of the Land Acquisition (Companies) Rules, 1963 for declaration under Section 6 of the LA Act? and 7. Whether the State Government has complied with Rules 3(2) and 4 of the Rules, 1963 and the Collector has submitted his report to the State Government and the same is	Section 6 has been made by the State Government without consulting the Land Acquisition Committee to be constituted under Rule-3 of the Land Acquisition (Companies) Rules, 1963.

forwarded to the Committee constituted for this purpose and whether it has consulted the Committee before declaring the lands notified & published under Section 6 notifications?	
Issue No. 8 & 9 8. Whether the beneficiary company has executed Memorandum of Understanding as required under Section 41 of the Land Acquisition Act with the State Government giving undertaking as provided under sub sections (1), (2) & (3) of the said section of the Act and the same is published in the official gazette as required under Section 42 thereof? And 9. Whether the Memorandum of Understanding dated 19/07/2006 executed by	i) MOU is not in conformity with sub sections (1) to (4A) of Section 41. ii) There is non-compliance with Section 39 of the Act as there is no formal agreement executed under Section 41.

the beneficiary company can be construed as a valid agreement as provided under Section 41 of the LA Act for acquiring the lands in question in favour of the beneficiary company?	
Issue No. 10 Whether the Collector has determined approx. amount of compensation to be awarded and deposited as required under the provisions and by following the procedure as provided under Section 23 and 24 of the LA Act?	The compensation to be awarded has been determined by the Collector on the basis of sales statistics secured from District Sub Registrar and the value of the land has been shown in the sales statistics has been treated as the market value and awarded the same as compensation.
Issue no. 11 Whether awards are passed by the Collector in compliance with Sections 9, 10 and 11 of the LA Act and award notices as required under Section 12 (2) of the Act are issued and served upon the owners/interested persons and thereafter possession of the lands	i) Notices under Sections 9 and 10 were not issued to the owners/interested persons for fling claim statement to award compensation is not done. ii) Award has not been communicated to the land owners as required

has been taken by the State Government under Section 16 of the LA Act and transferred in favour of the company?	under Section 12(2) of the LA Act to work out their statutory rights as provided under Section 18 of the Act.
Issue No. 12 (A) Whether the impugned notifications acquiring the lands in the locality is legal and valid, as certain lands of them are declared for Wildlife Sanctuary according to Gazette notification dated 23.4.1984 and two rivers viz. “Nuanai" and "Nala" are flowing in the lands in question according to satellite map issued by the Department of Forest, would it affect the ecology and environment in the locality? And (B) If so, whether it amounts to violation of provisions of Wildlife (Protection) Act; Air (Prevention & Control of Pollution) Act as well as Water (Prevention & Control of Pollution) act, and Environment Protection	i) The satellite maps issued by the Department of Forest produced by the petitioners in the PIL petitions, clearly shows that two rivers, namely, ‘Nuanal’ and ‘Nala’ are flowing in certain lands acquired in favour of the beneficiary company. Hence, the control of the said rivers will be under the said private company. If the acquisition proceedings are held to be valid in law thereby the doctrine of public trust will be violated. ii) Requiring the beneficiary company to maintain the flow of the above two rivers would also affect the residents of the locality at large. ii) The large scale construction for the establishment of the proposed university will

Act of 1986 and for this reason would it affect either the public interest or public injury or violation of Rule of Law?	also adversely affect the Wildlife Sanctuary, entire Eco system and the ecological environment in the locality.
Issue Nos. 13, 14 & 15 13. Whether the PIL must succeed if the question Nos. 12(A) & (B) are answered in favour of the appellants and for violation of any provisions of Land Acquisition Act as well as Land Acquisition (Companies) Rules, 1963? And 14. Whether the acquisition proceedings in its entirety liable to be quashed, if the petitioners have made out a case, by exercising judicial review power by this Court? And 15. What relief petitioners are entitled?	i) Acquisition proceedings from the stage of initiation till the date of awards which in fact in law is not awarded and the alleged taking over possession is in violation of the Land Acquisition (Companies) Rules, 1963. ii) On the requisition made by the beneficiary company by misrepresenting facts and playing fraud on the State Government, has vitiated the entire land acquisition proceedings. iii) Apart from public interest the petitioners have also pleaded for the small land owners of the marginalised section who have no access to this Court to fight litigation.

	iv) Therefore, the acquisition proceedings in its entirety is liable to be quashed, as per the judgement of the Supreme Court in **HMT House Building Cooperative Society Vs. Syed Khader & Ors., AIR 1995 SC 2244**.

8. We have heard the learned counsel appearing on behalf of the respective parties at length.

8.1 We have also gone through in detail and considered the impugned judgment and order passed by the High Court quashing and setting aside the entire acquisition proceedings.

8.2 Now, so far as the submission on behalf of the appellants that the High Court has seriously erred in quashing and setting aside the entire acquisition proceedings as only few landowners submitted the objections under Section 5A of the Act, 1894 and that the High Court has materially erred in entertaining and allowing the Public Interest Litigation petitions is

concerned, at the outset, it is required to be noted that in the present case, the State Government has in utter disregard to the relevant provisions of the Act, 1894 and the Rules, 1963 had acquired a huge tract of land to the extent of approximately 7000 acres of agricultural lands belonging to the various landowners, namely, 6000 families and thus involving displacement of approximately 30,000 people. It is required to be noted that the lands in question acquired for the beneficiary foundation / company / trust was acquired for the proposed university in a prime location just adjacent to the Wildlife Sanctuary and from the lands in question acquired, two small rivers belonging to the State / acquired by the State are passing. The manner in which the State Government has dealt with and acquired the agricultural lands belonging to 6000 families and as it in fact favoured the private limited company, which was subsequently alleged to have been converted to a public company and that too without holding any proper inquiry to the need etc., we are of the opinion that the High Court has rightly entertained the writ petitions including the Public Interest Litigation petitions and merely because some persons did not file the objections under Section 5A and/or accepted a meagre compensation and/or even accepted the compensation

cannot be a ground to set aside the acquisition proceedings, which as such rightly observed by the High Court, is vitiated by not following the statutory provisions under the Act, 1894 as well as the Rules, 1963. It is required to be noted that as such the entire initiation of land acquisition proceedings and even right from selection of the land was by the company – beneficiary company and not by the State Government. There is an utter non-compliance of Rule 4 of the Rules, 1963 (which shall be dealt with hereinbelow). Under the circumstances, it cannot be said that the High Court has committed any error in entertaining the writ petitions including the Public Interest Litigation petitions. Cogent reasons have been given by the High Court in paragraphs 63 to 67 while entertaining the public interest litigation petitions and the writ petitions, which are as under:-

> "**63.** For the reasons stated supra, definitely the public interest is involved in these writ petitions filed by the public spirited persons. It is profitable to know what the apex Court ruled on the point.
>
> In **People's Union for Democratic Rights Vs. Union of India, (1982) 3 SCC 235**, the Supreme Court held as under:
>
> "2 ..... We wish to point out with all the emphasis at our

command that public interest litigation which is a strategic arm of the legal aid movement and which is intended to bring justice within the reach of the poor masses, who constitute the low visibility area of humanity, is a totally different kind of litigation from the ordinary traditional litigation which is essentially of an adversary character where there is a dispute between two litigating parties, one making claim or seeking relief against the other and that other opposing such claim or resisting such relief. Public interest litigation is brought before the court not for the purpose of enforcing the right of one individual against another as happens in the case of ordinary litigation, but it is intended to promote and vindicate public interest which demands that violation of constitutional or legal rights of large number of people who are poor, ignorant or in a socially or economically disadvantaged position should not go unnoticed and un-redressed. That would be destructive of the rule of law which forms one of the essential elements of public interest in any democratic form of Government. The rule of law does not mean that the protection of the law must be available only to a fortunate few or that the law should be allowed to be prostituted by the vested

interests for protecting and upholding the status quo under the guise of enforcement of their civil and political rights. The poor too have civil and political rights and the rule of law is meant for them also, thought today it exists only on paper and not in reality. If the sugar barons and the alcohol kings have the fundamental right to carry on their business and to fatten their purses by exploiting the consuming public, have the chamars belonging to the lowest strata of society no fundamental right to earn an honest living through their sweat and toil? The former can approach the courts with a formidable army of distinguished lawyers paid in four or five figures per day and if their right to exploit is upheld against the Government under the label of fundamental right, the courts are praised for their boldness and courage and their independence and fearlessness and applauded and acclaimed. But, if the fundamental right of the poor and helpless victims of injustice is sought to be enforced by public interest litigation, the so-called champions of human rights frown upon it as waste of time of the highest court in the land, which, according to them, should not engage itself in such small and trifling matters. Moreover, these self-styled human rights activists forget that civil

and political rights, priceless and invaluable as they are for freedom and democracy, simply do not exist for the vast masses of our people. Large numbers of men, women and children who constitute the bulk of our population are today living a sub-human existence in conditions of object poverty; utter grinding poverty has broken their back and sapped their moral fiber. They have no faith in the existing social and economic system. What civil and political rights are these poor and deprived sections of humanity going to enforce? This was brought out forcibly by W. Paul Gormseley at the silver jubilee celebrations of the Universal Declaration of Human Rights at the Banaras Hindu University :

> "Since India is one of those countries which has given a pride of place to the basic human rights and freedoms in its Constitution in its Chapter on Fundamental Rights and on the Directive Principles of State Policy and has already completed twenty-five years of independence, the question may be raised whether or not the fundamental rights enshrined in our Constitution have any meaning to the millions of our people to

> whom food, drinking water, timely medical facilities and relief from disease and disaster, education and job opportunities still remain unavoidable. We, in India, should on this occasion study the human rights / declared and defined by the United Nations and compare them with the rights available in practice and secured by the law of our country."

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

> "Since human rights and fundamental' freedoms are indivisible, the full realization of civil and political rights without the enjoyment of economic,

social and cultural rights is impossible."

Of Course, the task of restricting the social economic order so that the social and economic rights become a meaningful reality for the poor and lowly sections of the community is one which legitimately belongs to the legislature and the executive, but mere initiation of social and economic rescue programmes by the executive and the legislature would not be enough and it is only through multi-dimensional strategies including public interest litigation that these social and economic rescue programmes can be made effective. Public interest litigation, as we conceive it, is essentially a cooperative or collaborative effort on the part of the petitioner, the State or public authority and the court to secure observance of the constitutional or legal rights, benefits and privileges conferred upon the vulnerable sections of the community and to reach social justice to them. The state or public authority against whom public interest litigation is brought should be as much interested in ensuring basic human rights, constitutional as well as legal, to those who are in a socially and economically disadvantaged position, as the petitioners who brings the

> public interest litigation before the court. The State or public authority which is arrayed as a respondent in public interest litigation should, in fact, welcome it, as it would view it an opportunity to right a wrong or to redress an injustice done to the poor and weaker sections of the community whose welfare is and must be the prime concern of the State or the public authority."

In **S.P Gupta v. Union of India and others, AIR 1982 SC 149**, the apex Court held as under:

> "We would therefore hold that any member of public having sufficient interest can maintain an action for judicial redress for public injury arising from breach of public duty or from violation of some provision of the Constitution or the law and seek enforcement of such public duty and observance of such constitutional or legal provision. This is absolutely essential for maintaining the rule of law, furthering the cause of justice and accelerating the pace of realization of the constitutional objective "Law", as pointed out by Justice Krishna Iyer in Fertilizer Corporation Kamgar Union v. Union of India, AIR 1981 SC 344," is a social auditor and this audit function can be put into action when some

> one with real public interest ignites the jurisdiction ..... :. Another point which requires emphasis is that cases may arise where there is undoubtedly public injury by the act or omission of the State or public authority but such act or omission also causes a specific legal injury to an individual or to a specific class or group of individuals. In such cases, a member of the public having sufficient interest can certainly maintain an action challenging the legality of such act or omission."

In the case of **Janata Dal Vs. H.S. Chowdhary,** reported in **AIR 1993 SC 892**, the Supreme Court taking note of the observations made in the case of **S.P. Gupta (supra)** and number of its earlier decisions, held as under:

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

vindicating any personal grievance, deserves rejection at the threshold.

It is depressing to note that on account of such trumpery proceedings initiated before the courts, innumerable days are wasted which time otherwise could have been spent for the disposal of cases of the genuine litigants. Though we are second to none in fostering and developing the newly invented concept of PIL and extending our lone arm of sympathy to the poor, the ignorant. the oppressed and the needy whose fundamental rights are infringed and violated and whose grievance go unnoticed, unrepresented and unheard; yet we cannot avoid but express our opinion that while genuine litigants with legitimate grievance relating to civil matters involving properties worth hundreds of millions of rupees and criminal cases in which persons sentenced to death facing gallows under untold agony and persons sentenced to life imprisonment and kept in incarceration for long years, persons suffering from the undue delay in service matters, Government or private persons awaiting the disposal of tax cases wherein huge amounts of public revenue or unauthorized collection of tax amounts are locked up, detenus

> expecting their release from the detention orders etc. etc. are all standing in a long serpentine queue for years with the fond hope of getting into the courts and having their grievances redressed, the busybodies, meddlesome interlopers, wayfarers or officious interveners having absolutely no public interest except for personal gain or private profit either for themselves or as proxy or others or for any other extraneous motivation or for glare of publicity break the queue muffing their face by wearing the mask of public interest litigation, and get into the courts by filing vexatious and frivolous petitions and thus criminally waste the valuable time of the courts and as a result of which the queue standing outside the doors of the Court never moves which piquant situation creates a frustration in the minds of the genuine litigants and resultantly they lose faith in the administration of our judicial system". (Emphasis added)

Further in a recent decision, in the case of **State of Uttaranchal Vs. Balwant Singh Chaufal & Ors.,** reported in **(2010) 3 SCC 402**, the Supreme Court referring to large number of its earlier decisions held as under:

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

36. Public interest litigation is not in the nature of adversarial litigation but it is a challenge and an opportunity to the Government and its officers to make basic human rights meaningful to the deprived and vulnerable sections of the community and to assure them social and economic justice which is the signature tune of our constitution. The Government and its officers must welcome public interest litigation because it would provide them an occasion to examine whether the poor and the downtrodden are getting

their social and economic entitlements or whether they are continuing to remain victims of deception and exploitation at the hands of strong and powerful sections of the community and whether social and economic justice has become a meaningful reality for them or it has remained merely a teasing illusion and a promise of unreality, so that in case the complaint in the public interest litigation is found to be true, they can in discharge of their constitutional obligation root out exploitation and injustice and ensure to the weaker sections their rights and entitlements.

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

40. In **M.C. Mehta v. Union of India** this Court observed that Article 32 does not merely confer power on this Court to issue direction, order or writ for the enforcement of fundamental rights. Instead, it also lays a constitutional obligation on this

Court to protect the fundamental rights of the people. The Court asserted that, in realization of this constitutional obligation, "it has all incidental and ancillary power including the power to forge new remedies and fashion new strategies designed to enforce the fundamental rights". The Court realized that because of extreme poverty, a large number of sections of society cannot approach the court. The fundamental rights have no meaning for them and in order to preserve and protect the fundamental rights of the marginalized section of the society by judicial innovation and creativity stated giving necessary directions and passing order in the public interest.

41. The development of public interest litigation has been an extremely significant development in the history of the Indian jurisprudence. The decisions of the Supreme Court in the 1970s loosened the strict locus standi requirements to permit filing of petitions on behalf of marginalised and deprived sections of the society by public spirited individuals, institutions and/or bodies. The higher courts exercised wide powers given to them under Articles 32 and 226 of the Constitution. The sort of remedies

> sought from the Courts in the public interest litigation goes beyond award of remedies to the affected individuals and groups. In suitable cases, the Courts have also given guidelines and directions. The Courts have monitored implementation of legislation and even formulated guidelines in the absence of legislation. If the cases of the decades of 70s and 80s are analysed, most of the public interest litigation cases which were entertained by the courts are pertaining to enforcement of fundamental rights of marginalised and deprived sections of the society.

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

65. For the reasons stated supra, the factual contentions urged by the learned Advocate General, placing reliance upon the report of the Additional Secretary to Tourism Department, is wholly contrary to the Gazette Notification of 1984 referred to supra and the Satellite Map issued by the Forest Department to the petitioners, which

is produced for our perusal. Further the legal contentions urged on behalf of the Company by Mr. Sanjit Mohanty, learned Senior Counsel that the petitioners have abused the process of this Court claiming that they are public spirited persons, is also untenable in law for the reason that they have established the case that interest of the public of the locality will be affected and also there will be violation of the Rule of the law if the acquisition of lands and grant of leasehold rights in respect of Government lands in favour of beneficiary Company is held to be not legal and valid and therefore we have to hold that there is no abuse of the process of this Court by the petitioners in approaching this Court espousing the public cause and public interest as the act of the state Government is in contravention of the Notification issued by the State Government way back in the year 1984 declaring certain lands nearby the lands acquired, as Wild life Sanctuary and the documents produced by the petitioners to prove the fact that two river are flowing on the acquired lands. For the reasons stated supra we are of the view that the petitioners in the PIL writ petitions have established that they are bona fide public spirited persons who are very much interested in protecting the public interest and see that the State Government discharged its responsibilities and fundamental duties towards the public of the locality keeping in view "the doctrine of public trust" upon the public properties. The disposal of the earlier writ petition filed by

nine persons referred to supra upon which reliance is placed by the learned Senior Counsel on behalf of the Company in support of his contention that the writ petitioners in the PIL have abused the process of this Court is not tenable in law, as this Court has not decided the case on merits by answering the substantial issues that arose for its consideration. In the present writ petitions by urging tenable grounds they have made out a strong case for granting the reliefs. If the PIL petitions are not allowed there will be a continuing wrong of the State Government and the beneficiary Company, which would violate the human rights of the residents of the locality where the lands are acquired and land owners/ interested persons. They are small holders of the lands who belong to the Marginalized sections of the society and therefore they have no access to the justice for which they have got constitutional right under Article 39A of the Constitution and hundreds acres of Government lands are granted in favour of the company is utter violation of law.

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

rejected and the public interested litigation writ petitions also have to be allowed.

Answer to Point Nos. 14 and 15:

67. We have answered all the points framed in these petitions against the State Government and the beneficiary Company by recording our reasons and we have held that the acquisition proceedings from the stage of initiation till the date of purported awards which in fact and law not awarded and the alleged taking over the possession of the lands is in flagrant violation of the statutory provision of Section 4, 5A, 6, 9, 10, 11, 12, (2), 23, 24, read with the provisions under Part - VII of the Land Acquisition Act, 1894. We have also answered the points that arose for our consideration in the Public interest Litigation holding that the initiation of the acquisition proceedings in favour of the beneficiary company, on the requisition made by the Vedanta Foundation by misrepresenting fact and playing fraud on the State Government, has vitiated the entire acquisition proceedings. We have further answered that the public interest at large is affected and there is violation of rule of law. Therefore, we have also held the writ petitions filed by the petitioners as public interest litigation are also required to be allowed and made observation that the petitioners in those petitions, apart from public interest, they have pleaded on behalf of small land holders who have no sustenance to approach this Court to fight

litigation. Therefore, the acquisition proceedings in its entirety in respect of persons who have approached this Court and even who have not approached this Court are liable to be quashed for the reason that there is flagrant violation of the aforesaid provisions of the Land Acquisition Act as observed by Supreme Court in the case of H.M.T House Building Co-operative Society Vs. Syed Khader & Ors, reported in AIR 1995 SCC 2244. The Supreme Court, while answering the legal questions that arose for consideration, held that prior approval of the Government is required under Section 44-A but as the same has not been followed, the entire acquisition proceedings was quashed. Further, the Supreme Court directed in the above referred case the State Government and the Society which was in the possession, that lands shall be resorted to the respective land owners irrespective of the fact whether they had challenged the acquisition of their lands or not and at paragraph 25 of its judgment has directed as hereunder:

> "26. We direct that as a result of quashing of the land acquisition proceedings including the notification as aforesaid, the possession of the lands shall be restored to the respective landowners irrespective of the fact whether they had challenged the acquisition of their lands or not. On restoration of the possession to the landowners they shall refund the

> amounts received by them as compensation ·or otherwise in respect of their lands. The appellant, the respondents and the State Government including all authorities/ persons concerned shall implement the aforesaid directions at an early date."

We are in complete agreement with the view taken by the High Court while entertaining the writ petitions and the Public Interest Litigation petitions.

8.3 The grounds on which the High Court has set aside the entire acquisition proceedings by holding that the same is vitiated by non-compliance of the relevant provisions of the Act, 1894, have been referred to and reproduced hereinabove.

8.4 At the outset, it is required to be noted that the entire acquisition proceedings / proceedings came to be initiated at the instance of the Vedanta Foundation, which commenced in the month of April, 2006. Initially, the company asked the Government of Orissa specifically to make available for it 15,000 acres of contiguous land around Nuanai, Puri District in Bhubaneshwar-Puri-Konark by 15.06.2006. The process for identifying the suitable locations was by the company. Even from the

presentation made to the Chief Minister at the relevant time and the relevant clauses of MoU dated 19.07.2006 and even the Section 41 agreement executed between the Government of Orissa and the Anil Agarwal Foundation, it can be seen that the land was identified by the company and not by the Government of Orissa. The same has been dealt with and considered by the High Court in extenso.

8.5 At this stage, it is required to be noted that initiation of the acquisition proceedings was by the Vedanta Foundation and thereafter by the Anil Agarwal Foundation, which admittedly at the relevant time and as on 19.07.2006 was a private company having three Directors on its Board and less than seven members. It is the case on behalf of the appellants that as subsequently the Anil Agarwal Foundation, which at the relevant time was a private company was converted to public company as on 13.12.2006 namely, viz., the date when the first Section 4(1) notification was issued and the relevant date for consideration would be 13.12.2006 has no substance and cannot be accepted. As observed hereinabove, the initiation of the proceedings to acquire the identified lands, identified by the appellant company was in the month of

April/June, 2006, which was followed by the MoU dated 19.07.2006. Therefore, the relevant date for consideration would be 19.07.2006 and not 13.12.2006 as sought to be contended on behalf of the appellants.

8.6 At this stage, it is required to be noted that even otherwise the subsequent alleged conversion from private company to public company was an attempt to get out of the statutory provision under the Act, 1894. The Law Department specifically observed that the land cannot be acquired by private company for the purposes for which the lands were sought to be acquired, only thereafter the appellants changed the status of the company from private company to public company. The aforesaid was a mala fide exercise on the part of the appellants.

8.7 It is further required to be noted that when the appellant tried to change its status from private to public company, the same was subject to compliance of Sections 23, 31, 189(2) and 192 of the Companies Act, 1956. As observed and the findings recorded by the High Court and even from the RTI query, it is clear that the appellant did not furnish the certified copy of the Articles of Association (as amended) as required under the provision of Section 31(2A). It is the case on behalf of the

appellant that the appellant successfully converted into the public company on 23.11.2006 and it increased number of members from 3 to 7 and in terms of Section 44 of the Companies Act, 1956, it amended its Articles of Association to delete the restriction on free transferability of the shares and the same has been acknowledged by the Registrar of Companies (ROC) by acknowledgment dated 21.02.2007 and 03.03.2011 is concerned, it is required to be noted and as observed hereinabove the relevant date for consideration would be June, 2006 and in any case 19.07.2006 when the MoU was entered into. Even the subsequent acknowledgment by the ROC was on 21.02.2007 and 03.03.2011 even much after Section 4(1) notification. Therefore, as rightly observed and held by the High Court legally, the appellant was not converted to public company, which as such was a Section 25 company and therefore, not a public company. At this stage, Section 44B of the Act, 1894 is required to be referred to, which reads as under:-

> "**44B. Land not to be acquired under this Part except for certain purpose for private companies other than Government companies.** - Notwithstanding anything contained in this Act, no land shall be acquired under this Part, except for the purpose mentioned in clause (a) of sub-section (1) of section 40, for a private

> company, which is not a Government company.
>
> Explanation. - "Private company" and "Government company" shall have the meaning respectively assigned to them in the Companies Act, 1956 (1 of 1956).”

8.8 As per Section 44B of the Act, 1894, notwithstanding anything contained in the Act, no land **shall** be acquired under Part VII, except for the purpose mentioned in clause (a) of sub-section (1) of Section 40, for a private company which is not a Government company. As per the Explanation, a “private company” shall have the meaning assigned to it in the Companies Act, 1956. As per Section 40(1) read with Section 39, a previous consent of appropriate Government and execution of the agreement is necessary (Section 39) and which shall not be given unless the appropriate Government be satisfied, either on the report of the Collector under Section 5A, sub-section (2) or by an enquiry held provided that the purpose of the acquisition is to obtain the land for the erection of dwelling-houses for workmen employed by the company or for the provision of amenities directly connected therewith. Sections 39 and 40 reads as under:-

"**39. Previous consent of appropriate Government and execution of agreement necessary.** - The provisions of sections 6 to 16 (both inclusive) and sections 18 to 37 (both inclusive) shall not be put in force in order to acquire land for any company under this Part, unless with the previous consent of the appropriate Government, not unless the Company shall have executed the agreement hereinafter mentioned.

40. Previous enquiry. - (1) Such consent shall not be given unless the appropriate Government be satisfied, either on the report of the Collector under section 5A, sub-section (2), or by an enquiry held as hereinafter provided, -

(a) that the purpose of the acquisition is to obtain land for the erection of dwelling houses for workmen employed by the Company or for the provision of amenities directly connected therewith, or

(aa) that such acquisition is needed for the construction of some building or work for a Company which is engaged or is taking steps for engaging itself in any industry or work which is for a public purpose, or

(b) that such acquisition is needed for the construction of some work, and that such work is likely to prove useful to the public.

> (2) Such enquiry shall be held by such officer and at such time and place as the appropriate Government shall appoint.
>
> (3) Such officer may summon and enforce the attendance of witnesses and compel the production of documents by the same means and, as far as possible, in the same manner as is provided by the Code of Civil Procedure, 1908 (5 of 1908) in the case of a Civil Court."

8.9 Thus, at the relevant time, when the company was a private company, in view of the bar under Section 44-B, the lands in question could not have been sought to be acquired / acquired by the appellant company de hors Section 44B read with Section 40(1)(a) of the Act, 1894. Therefore, the High Court has rightly held that the acquisition was illegal on the aforesaid ground.

8.10 At this stage, it is required to be noted that even at the relevant time, the University in question was/is non-existent as no university has come into existence under the University Grants Commission Act, 1956 nor under the Orrisa Universities Act. The case on behalf of the appellant that the State legislature has already passed a bill to establish the university is neither here nor there as

even as per the appellant's response, the same is pending assent of the Governor.

8.11 Even the High Court has given specific findings on Issue No. 3 that the entire acquisition proceedings in favour of the beneficiary company by issuing a notification under Section 4(1) of the Act were without complying with the mandatory provisions of Sections 39, 40 and 41 of the Act, 1894 read with Rules 3(2) and (4) of the Rules, 1963. Rules 3 and 4 of the Rules, 1963 are as under:-

> **"3. Land Acquisition Committee.** - (1) For the purpose of advising the appropriate Government in relation to acquisition of land under Part VII of the Act, the appropriate Government shall, by notification in the Official Gazette, constitute a Committee to be called the Land Acquisition Committee.
>
> (2) The Committee shall consist of -
>
> (i) The Secretaries to the Government of the Departments of Revenue, Agriculture and Industries or such other officers of each of the said Departments as the appropriate Government may appoint; and
>
> (ii) such other members as the appropriate Government may appoint, for such term as that

Government may, by order specify, and

(iii) the Secretary to the Department or any officer nominated by him dealing with the purposes for which the company proposes to acquire the land.

(3) The appropriate Government shall appoint one of the members of the Committee to be its Chairman.

(4) The Committee shall regulate its own procedure.

(5) It shall be duty of the Committee to advise the appropriate Government on all matters relating to or arising out of acquisition of land under Part VII of the Act, on which it is consulted and to tender its advice within one month from the date on which it is consulted :

Provided that the appropriate Government may on a request being made in this behalf by the Committee and for sufficient reasons extend the said period to a further period not exceeding two months.

4. Appropriate Government to be satisfied with regard to certain matters before initiating acquisition proceedings. - (1) Whenever a Company makes an application to the appropriate Government for acquisition of any land, that

Government shall direct the Collector to submit a report to it on the following matters, namely :-

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

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

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

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

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

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

(2) The Collector shall, after giving the Company a reasonable opportunity to make any representation in this behalf, hold an enquiry into the matters referred to in sub-

rule (1) and while holding such enquiry he shall, -

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

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

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

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

(3) As soon as may be after holding the enquiry under sub-rule (2), the Collector shall submit a report to the appropriate

> Government and a copy of the same shall be forwarded by that Government to the Committee.
>
> (4) No declaration shall be made by the appropriate Government under section 6 of the Act unless -
>
> (i) the appropriate Government has consulted the Committee and has considered the report submitted under this rule and the report, if any, submitted under section 5-A of the Act; and
>
> (ii) the agreement under section 41 of the Act has been executed by the Company."

8.12 At the relevant time, there was no Section 41 agreement at all. Even no inquiry was made by the State Government in terms of Rule 4 read with Rule 3 of the Rules, 1963. Declaration under Section 6 could not have been issued by the State Government without consulting the Land Acquisition Committee to be constituted under Rule 3 of the Rules, 1963. Constituting the Core Committee by the State Government, which was to coordinate the entire acquisition cannot be said to be constituting the Land Acquisition Committee as required under Rule 3. The object and purpose of constituting the

Land Acquisition Committee under Rule 3 is to advise the appropriate Government on all matters relating to or arising out of acquisition of land under Part VII of the Act, 1894 on which it is consulted and to tender its advise. Therefore, on this ground also the land acquisition proceedings have been vitiated.

8.13 There is a non-compliance of mandatory requirement under Rule 4 of the Rules, 1963. Before initiating land acquisition proceedings for the company, the Government shall direct the Collector to submit a report to it on the mattes mentioned in Rule 4 including which are:-

> "(i) that the Company has made its best endeavour to find out lands in the locality suitable for the purpose of the acquisition;
>
> (ii) that the Company has made all reasonable efforts to get such lands by negotiation with the persons interested therein on payment of reasonable price and such efforts have failed;
>
> (iii) that the land proposed to be acquired is suitable for the purpose;
>
> (iv) that the area of land proposed to be acquired is not excessive;

> (v) that the Company is in a position to utilise the land expeditiously; and
>
> (vi) where the land proposed to be acquired is good agricultural land, that no alternative suitable site can be found so as to avoid acquisition of that land."

8.14 As per Rule 4(2)(i) in any case where the land proposed to be acquired is agricultural lands, the Collector is required to consult the Senior Agricultural Officer of the District whether or not such land is good agricultural land. The Collector is also required to satisfy and determine having regard to the provisions of Sections 23 and 24 of the Act, the approximate amount of compensation likely to be payable in respect of the land, which, in the opinion of the Collector, should be acquired for the company.

8.15 From the material on record, the High Court has given the specific findings that there is a non-compliance of mandatory provisions under Rules 3 and 4 of the Rules, 1963 and therefore, the entire acquisition proceedings for the beneficiary company has been vitiated and there are checks and balances and certain mandatory procedures and requirements are to be satisfied, more particularly, when the lands are to be acquired for the company, the same have to be adhered to and non-consideration of the

relevant aspects, which are mandatory to be considered under Rule 4 would vitiate the entire acquisition proceedings as the subjective satisfaction by the State Government has been vitiated on non-consideration of the relevant aspects, more particularly, the aspects mentioned in Rule 4.

8.16 Even there is a specific finding recorded by the High Court that the beneficiary company has not executed the MoU as required under Section 41 of the Act that the State Government even undertaking as provided in sub-sections (1), (2) and (3) of Section 41. While ordering so, in paragraph 53, the High Court has observed as under:-

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

The MOU dated 19.7.2006 executed by Vedanta Company in favour of the State Government was before publishing the preliminary notifications in respect of the acquired lands. On the basis of the said MOU preliminary notification dated 13.12.2006 to 22.12.2006 were published. Therefore, the said agreement was not executed by the beneficiary company in favour of the State Government for publishing section 4(1) notifications by giving previous consent by it as provided under section 39 of the LA.Act to put the provisions of sections 4 to 16 (both inclusive) and section 18 to 37 in force. Therefore, there is no valid agreement before the State Government to exercise the statutory power and grant previous consent for publishing the preliminary notification. For this reason, publication of the preliminary notifications on the basis of the said MOU executed by Vedanta Company does not enure to the benefit of the beneficiary company. Therefore, the said agreement is not valid as required under section 39 read with section 41 of the LA.Act and, therefore, acquisition of lands by publishing section 4 (1) notification in favour of the beneficiary company is vitiated in law for the reason that before putting the provisions of section 4 to 16 and 18 to 37 in order to acquire land in favour of the beneficiary company, no previous consent of the State Government was there and such consent also shall not be given unless the company has executed

> the agreement in terms of section 41 of the LA.Act. Therefore, the agreement is not only not in conformity with sub-sections (1) to (4) and (4A) of section 41, but the same is not legal and valid for the reason that much prior to the said agreement, preliminary notification were published and thereafter final notifications were published which are not permissible in law. Therefore, the same is in contravention of section 39 of the Act."

8.17 The most important aspect, which is required to be considered is the non-application of mind by the State Government on environmental aspects and passing of two rivers from the acquired lands in question. It is not in dispute that from the lands in question two rivers namely 'Nuanai' and 'Nala' are flowing, which as such were acquired by the State Government. How the maintenance of the rivers etc. can be handed over to the beneficiary company. If the lands in question are continued to be acquired by the beneficiary company, the control of the rivers would be with the said private company, which would violate the Doctrine of Public Trust. Even requiring the beneficiary company to maintain the flow of above two rivers may also affect the residents of the locality at large.

8.18 It is also required to be noted that just across the road, there is a Wildlife Sanctuary, which is just adjacent

across the road to the proposed university and the lands acquired. Therefore, the large-scale construction for the establishment of the proposed university as observed by the High Court will also adversely affect the Wildlife Sanctuary, entire Eco system and the ecological environment in the locality. It is a duty of the State to protect the Wildlife Sanctuary and it may affect the entire Eco system and the ecological environment in the locality. It is also required to be noted that even the distance of the sea from the proposed Vedanta University is approximately 2000 meters. Merely because the Balukhand Wildlife Sanctuary is separated from the proposed site by a highway – Puri-Konark Marine Drive, cannot be a ground to acquire the huge lands for the proposed university and as rightly observed by the High Court, the same will adversely affect the Wildlife Sanctuary and the entire Eco system and the ecological environment in the locality. The aforesaid aspects has not at all been considered by the State Government and/or the Collector and/or the appropriate authority even while considering the proposal and/or even the objections under Section 5A of the Act, 1894.

8.19 Even otherwise, there is a non-application on the part of the State Government on the requirement of the

lands by the beneficiary company. It is required to be noted that the lands were proposed to be acquired at the instance of one foundation / company and the State Government was dealing with the lands belonging to the agricultural landowners. It is required to be noted that the Government is holding a public trust and has to deal with the lands belonging to private landowners, more particularly, agricultural landowners in accordance with law. The State Government could not have considered the proposal from only one beneficiary/trust. There may be other public trusts / companies, who might be interested in establishing such university. Even no proper inquiry seems to have been initiated by the Government / Collector while considering the proposal by the beneficiary company. It is required to be noted that initially, 15,000 acres of the agricultural lands was sought to be acquired for the proposed university. Ultimately, approximately, 8000 acres of the land belonging to the private landowners / agricultural landowners came to be acquired. The State Government has also handed over the possession of approximately 495 acres of land belonging to the State Government including the Gochar Lands etc., which could have been used for the other public purpose and even for the Gochar Lands also.

8.20 From the material on record, it appears that undue benefits were proposed / in fact offered and given to the beneficiary company providing undue largesse like:-

(i) total autonomy to Vedanta University and its authorities with regard to administration, admission, fee structure, curriculum and faculty selection;

(ii) proposed university to have complete immunity from any reservation laws of the State Government;

(iii) all assistance in getting regulatory approvals from UGC, AICTE etc.;

(iv) the Government agreed to provide 4-lane road from Bhubaneshwar city to the proposed site;

(v) in the agreement, the Government also agreed to make the land use/ zoning plan in the 5 km radius from the university boundary only after Consultation with Vedanta;

(vi) the Government also promised to exempt all state levies/ taxes/ duties namely, viz. VAT, Works Contract Tax, Stamp Duty and Entry tax on R&D equipment, educational aids, lab equipment and tools, and construction materials from the date of signing of the MoU;

(vii) the Government also promised to assist the Foundation in obtaining NOC from SPCB and all clearances from the Central Government;

(viii) the Government also promised to assist the Foundation in arranging rapid EIA and EMP for the project;

(ix) the Government also promised to provide extraordinary huge amounts of electricity and water.

8.21 It is not appreciable why the Government offered such an undue favour in favour of one trust/ company. Thus, the entire acquisition proceedings and the benefits, which were proposed by the State Government were vitiated by favourism and violative of Article 14 of the Constitution of India.

8.22 From the aforesaid and the detailed findings recorded by the High Court reproduced hereinabove, we are more than satisfied that the High Court has not committed any error and in fact the High Court was justified in setting aside the entire acquisition proceedings, which has been vitiated by non-compliance of the statutory provisions under the Act, 1894 and the Rules, 1963 and vitiated by mala fides and favourism and is a

clear case of the non-application of mind on relevant aspects. We are in complete agreement with the view taken by the High Court.

8.23 The submission on behalf of the appellant that now the appellant is ready to confine to acquisition of 3837 acres of land only and that they are now willing to exclude the lands belonging to 7 land losers, who have filed the writ petitions, from the acquisition proceedings and/or the landowners before this Court and/or the land belonging to the land losers before this Court is concerned, it will strengthen our finding that there was no proper inquiry with respect to the requirement. As observed hereinabove, initially, 15,000 acres was proposed to be acquired, which is now reduced to 3837 acres. Meaning thereby, the proposal was for exaggerated demand. This was mala fide intention on the part of the appellant company / foundation. At this stage, it is required to be noted that it was the specific case on behalf of the original writ petitioners, more particularly, the Public Interest Litigation petitioners that if such a huge land would have been acquired and/or even the lands, which are already acquired, would be misused and/or put to use for some other purpose like mining activities etc. At this stage, it is required to be noted that the lands to be acquired are

agricultural lands belonging to 6000 families and their only source of livelihood is on the agricultural lands, which cannot be compensated in terms of money, therefore, the proposal made now has to be rejected outright.

9. In view of the above and for the reasons stated above, all these appeals fail and the same deserve to be dismissed and are accordingly dismissed with costs, which is quantified at Rs. 5 lakhs to be deposited by the appellant – beneficiary company – Anil Agarwal Foundation with the Registrar of this Court within a period of six weeks from today and on such deposit, the same be transferred to the Orissa State Legal Services Authority.

…….J.
[M.R. SHAH]

NEW DELHI; …….J.
APRIL 12, 2023. **[KRISHNA MURARI]**