

IN THE HIGH COURT OF ORISSA AT CUTTACK**WRIT PETITION (CIVIL) No.22305 of 2010**

Subha Narayan Lenka and Others ***Petitioners***

-versus-

State of Odisha and Others ***Opposite Parties***

Advocates appeared in this case:

For Petitioners : Mr. S.K. Gajendra, Advocate

For Opposite Parties : Mr. S.N. Das
Addl. Standing Counsel

CORAM:
THE CHIEF JUSTICE
JUSTICE R.K. PATTANAİK

JUDGMENT
31.03.2022

Dr. S. Muralidhar, CJ.

1. This Public Interest Litigation (PIL) has been brought forth by nine residents of Paradeep Town, Jagatsinghpur challenging notification dated 23rd October, 2008 under Section 4(1) of the Land Acquisition Act, 1894 (LA Act) for acquisition of an area of Ac 8.41 decimals in village Udayabata. It also challenges the subsequent declaration dated 11th May, 2009 under Section 6(1) of the LA Act. It is contended that the acquisition has been undertaken at the behest of the Odisha Industrial Infrastructure

Development Corporation (IDCO) (Opposite Party No.4) to benefit a private company i.e. M/s. Goa Carbon Limited (Opposite Party No.5) whose operations, it is alleged, has caused serious health hazards to the local people. It is alleged that acquisition of land for Opposite Party No.5 cannot be said to be for public purpose. It is alleged that the entire proceedings have been made in violation of the LA Act without considering the valid objections raised by the Petitioners under Section 5A of the LA Act.

2. In the present petition which was filed on 20th December, 2010 notice was issued on 9th March, 2011. As far as Misc. Case No.20425 of 2010 filed along with the writ petition is concerned, it was directed therein by the Court that pending consideration of the said application, further proceedings in LAC No.4 of 2008 pending before the Special Land Acquisition Officer (SLAO), Jagatsinghpur shall remain stayed till the next date. However, on the next date i.e. 10th April, 2012 the said interim order was not continued but on 27th March, 2014 it was continued till the next date. It appears from the order sheet that the interim order was not continued after 25th August, 2015. At one stage, the matter went before the Lok Adalat but no settlement could be arrived at.

3. In response to the notice, the Opposite Party No.5 filed its counter affidavit on 6th February, 2012. It is pointed out that although the Petition is styled as a PIL, it is by nine private individuals seeking redressal of their personal grievance. It is

pointed out that the Petitioners were aware of every stage of the land acquisition proceedings but chose to remain silent. At the stage when Opposite Party No.5 was about to set up a power plant with the land in question, the petition was filed by resorting to falsehoods regarding non-compliance of the requirements of the LA Act.

4. Opposite Party No.5 is stated to be engaged in the manufacture and marketing of Calcined Petroleum Coke (CPC). It supplies CPC to Aluminum Smelters and manufacturers of Graphite Electrodes and Titanium Dioxide as well as metallurgical and chemical industries. CPC is stated to be the best material currently available for making Carbon Anodes, for smelting Alumina to Aluminium in the Electrolytic Smelting Process. CPC is stated to be constituted key raw material for Aluminum Industries. It is stated that Opposite Party No.5 has decided to use the Hot Flue Gases emerging from the Petroleum Coke Calcinations Kiln operated at Paradeep, to generate about 11 MW Power out of which 1.5 MW power is to be utilized for captive use and remaining bulk of thermal power is to be sold to the grid to be utilized for public purposes. Accordingly, Opposite Party No.5 prepared a project profile and submitted an application to IPICOL which recommended its case to IDCO for allotment of land. It claims to have complied with all the instructions of IDCO.

5. On 11th August, 2008 IDCO asked Opposite Party No.5 to deposit Rs.35,82,660/- to expedite the process for issuance of

Notification under Section 4(1) of the LA Act after adjusting the sum of Rs.50,000/- already deposited by it. This was complied with on 30th August, 2008. Of the amount deposited IDCO transmitted Rs.17,91,330/- to the SLAO by a demand draft.

6. Opposite Party No.5 further states that the Section 4 (1) LA Act notification was published on 23rd October, 2008 and was given wide publicity. It is claimed that due procedure of inviting objections under Section 5A of the LA Act was followed. Valuation reports for the structures on the land to be acquired including wells, tanks, fruit bearing trees were requisitioned. A letter dated 29th April, 2009 was issued by the Industries Department to the Revenue and Disaster Management Department indicating an estimated amount of Rs.2,73,84,473/- as the probable cost of acquisition of the land in question under the LA Act. On 7th May, 2009 IDCO informed Opposite Party No.5 to deposit Rs.2,65,40,620/- after deducting the sum already deposited by it. It is stated that on 8th April, 2010 the said sum was deposited by Opposite Party No.5 with IDCO. The procedure contemplated under Sections 8 to 11 of the LA Act were then taken up. Opposite Party No.5 executed a lease deed and took possession of the land. The record of rights (RoR) has also been corrected in the name of IDCO and Opposite Party No.5 on 15th April, 2011. It is only after completion of all the above processes that the present petition was filed.

7. Opposite Party No.5 contested the averments of the Petitioner that the industry being set up by Opposite Party No.5 would increase the pollution in the locality. It maintained that the proposed plan “only act as effective device as a pollution control of the existing factory”. It further pointed out that obtaining clearance of the State Pollution Control Board (SPCB) is a prerequisite to establish an industry and that in the present case, the SPCB has been asking Opposite Party No.5 to proceed with the present power plant as “it would act as a market-friendly pollution control device”. It maintained that the establishment of the plant of Opposite Party No.5 was in the larger public interest. In reply to Misc. Case No.20425 of 2010, Opposite Party No.5 pointed out that LAC No. 4 of 2008 was confined to Petitioner No.6 and did not involve the other Petitioners. It asserted that the plant in question would reduce the pollution level in the locality. It was pointed out that 9 Petitioners had purchased a minor patch of land which was under acquisition.

8. On 16th February, 2014 a counter affidavit was filed by the IDCO which was more or less on the same lines as that of Opposite Party No.5. Reference was made to Section 31 (1) of the Orissa Industrial Infrastructure Development Corporation Act, 1980 (OIIDC Act) which empowers IDCO to acquire land by taking recourse to the LA Act.

9. A rejoinder affidavit was filed by one Niranjan Behera, who is Petitioner No.3 to the counter affidavit filed by Opposite Party

No.5. It is contended that since Opposite Party No.5 admitted to be manufacturing CPC, the apprehension of the Petitioner that “it would emit huge black carbon” in the locality thereby polluting the environment” is vindicated. It is contended that after the Petitioner had filed objections and had attended the hearing, “no further communication was made to them intimating the fate of hearing on their objection”. It is claimed that all subsequent steps taken including handing over the land and making the corresponding entries in the RoR are illegal. It was contended that since the land was acquired for a company, Part-VII of the LA Act and Rule 4 (1) of the Land Acquisition (Companies) Rules, 1963 were required to be complied with.

10. A separate counter affidavit has been filed on behalf of the SLAO on 5th August, 2014. It is maintained that the land was acquired for public purpose under Part-II of the LA Act and not under Part-VII Therefore, Sections 38-A to 50 of the LA Act or Rule 4(1) of the Land Acquisition (Companies) Rules, 1963 were not required to be complied with. It is maintained there has been no complaint that the industries in Paradeep are endangering the life of the people. It is stated that Section 6(1) declaration has been duly published in the Official Gazette and in two daily newspapers widely circulating in the locality and a general notice to that effect has been served in the locality in due process of law.

11. A rejoinder affidavit was filed to the above counter affidavit on 6th July, 2018 in which it is claimed that Part-VII of the LA

Act had to be complied with. It was now contended that it is mandatory for Opposite Party No.5 “to obtain the clearance from the National Green Tribunal”.

12. This Court has heard the submissions of Mr. S.K. Gajendra, learned counsel for the Petitioners and Mr. S.N. Das, learned Additional Standing Counsel for the Opposite Party Nos.1 to 4 and Mr. A. Pattnaik, learned counsel appearing for Opposite Party No.5.

13. In the period of over 11 years of the pendency of the present petition, the only interim order was passed by this Court was regarding non-continuation of the proceedings in LAC No.4 of 2008 pending before the SLAO. This concerned only one of the Petitioners i.e. Petitioner No.6. That interim order too has not continued after 25th August, 2014. The plant in question has in the meanwhile been operational.

14. No affidavits have been filed by the Petitioners indicating any particular instance of any of the habitants of the locality where the plant is located of their suffering on account of any pollution caused by the plant in question. If indeed there was any such difficulty faced by an inhabitant, there should not have been any difficulty in the Petitioners bringing forth those details before the Court by filing the affidavits of the affected persons.

15. There is merit in the contention of the Opposite Parties that the present petition filed as PIL is in fact is not a PIL, but in fact a class action litigation. It appears to be a grievance voiced by 9 particular residents, whose lands were acquired for the purposes of setting up of an industry of the Opposite Party No.5.

16. As far as the grievance regarding non-compliance of the provisions of the LA Act is concerned, it does appear from the notification enclosed with the petitions and the replies filed that the acquisition was under the provisions of Chapter II of the LA Act and not Chapter VII. Consequently, there was no occasion for Sections 38-A to 50 of the LA Act to be complied with or for Rule 4 (4) of the Land Acquisition (Companies) Rules, 1963 Rules to be applied.

17. The Court is satisfied that the procedural aspects of the LA Act have indeed been complied with inasmuch as the objections were invited under Section 5-A of the LA Act, the objectors were heard and thereafter the notifications were issued for completing the acquisition proceedings and passing of the Award. Opposite Party No.5 also deposited the requisite consideration for the acquisition of land. Interestingly, none of the Petitioners made any grievance regarding non-receipt of compensation. Even if they did have such grievance, there are sufficient provisions in the LA Act to address it.

18. As regards the industry being a polluting industry, there is no empirical data placed before the Court to enable it to appreciate such a contention. Interestingly, the SPCB is not made a party to the proceedings. It is not understood how the Petitioners can expect Opposite Party No.5 to take prior 'clearance' from the NGT for continuing with the industry with there being no complaint filed by the Petitioners in that regard before the NGT. If there are instances of anyone suffering on account of the pollution if any caused as a result of the operation of the industry in question, it would be open to the affected persons to approach the NGT for appropriate relief.

19. For all of the aforesaid reasons, the Court is not satisfied that any case has been made out for interference. The writ petition is dismissed, but in the circumstances, with no order as to costs.

(S. Muralidhar)
Chief Justice

(R.K. Pattanaik)
Judge

S.K.Jena/PA