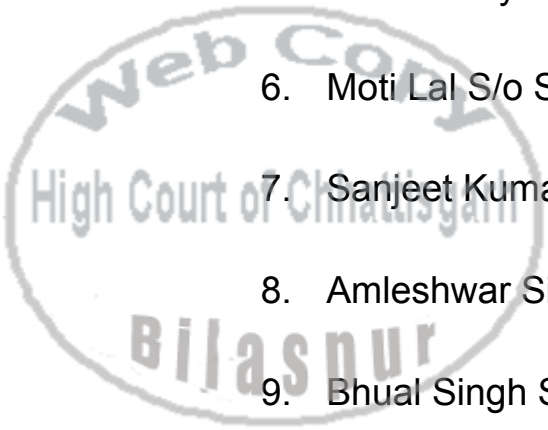




HIGH COURT OF CHHATTISGARH, BILASPUR

WPC No. 302 of 2022

1. Mangal Sai Armo S/o Late Sukrit Ram Aged About 57 Years R/o Village Charpara Tara (Gram Panchayat Tara), Tahsil Prem Nagar, District Surajpur Chhattisgarh
2. Amol Das S/o Bahal Das Aged About 42 Years
3. Budhi Das S/o Bahal Das Aged About 38 Years
4. Shiv Kumari D/o Bahal Das Aged About 40 Years
5. Sumit Saay S/o Buchuri Aged About 32 Years
6. Moti Lal S/o Sukrit Aged About 50 Years
7. Sanjeet Kumar Singh S/o Sukrit Aged About 48 Years
8. Amleshwar Singh S/o Sukrit Aged About 40 Years
9. Bhual Singh S/o Jagat Aged About 50 Years R/o
10. Jhamal Lal S/o Jagat Aged About 48 Years
11. Mohar Saay S/o Jagat Aged About 40 Years
12. Tara Bai D/o Jagat Aged About 38 Years
13. Daiya Bai W/o Jagat Aged About 68 Years
14. Pahalwaan S/o Buchuri Aged About 62 Years
15. Vishnu Prasad S/o Banwari Aged About 40 Years
16. Prem Lata D/o Banwari Aged About 38 Years
17. Chandravati D/o Banwari Aged About 35 Years
18. Seema D/o Banwari Aged About 32 Years





19. Maya Rani D/o Banwari Aged About 30 Years
20. Tulsiya W/o Banwari Aged About 60 Years
21. Naan Sai S/o Buchuri Aged About 55 Years
22. Amar Saay S/o Hanoo Aged About 55 Years
23. Budhram Markam S/o Gunu Aged About 38 Years
24. Chamru Ram S/o Sumaar Saay Aged About 66 Years
25. Shiv Prasad Porte S/o Somnath Aged About 35 Years
26. Murti Singh S/o Sukrit Aged About 47 Years
27. Rajo Singh D/o Sukrit Aged About 35 Years

All of the above petitioners No. 2 to 27 are R/o Village Charpara Tara
(Gram Panchayat Tara), Tahsil Prem Nagar, District Surajpur
Chhattisgarh

---- Petitioners

Versus

1. Union of India Through Secretary, Ministry of Coal, Shastri Bhawan,
New Delhi
2. Rajasthan Rajya Vidyut Utpadan Nigam Ltd. Through Its Managing
Director Vidyut Bhawan, Janpath Jyoti Nagar, Jaipur, Rajasthan.
3. State of Chhattisgarh Through Its Chief Secretary, Mantralaya, Nava
Raipur
4. District Collector, Collectorate, Ambikapur, District Sarguja,
Chhattisgarh
5. District Collector, Collectorate, Surajpur District Surajpur
Chhattisgarh



6. Rajasthan Collieries Limited Through Its Managing Director, S 21,
Second Floor, Mahima Trinita Plot No. 05, Swej Farm, New Sanganer
Road, Sodala, Jaipur, Rajasthan 302019
7. Adani Enterprises Limited Through Its Managing Director Adani
House, Ahmedabad, Gujarat
8. Coal Controller, 1, Council House Street, Kolkata, West Bengal
700001

---- Respondents

WPC No. 560 of 2022

1. Dharam Singh Korram S/o Late Mohan Singh Aged About 44 Years
R/o Village Hariharpur (Gram Panchayat Salhi), Tahsil Udaipur,
District Sarguja Chhattisgarh.
2. Anand Kunwar W/o Mohan Singh Aged About 69 Years
3. Jamuna Prasad S/o Thakura Aged About 36 Years
4. Jagarnath S/o Hannu Aged About 50 Years
5. Sukul Ram S/o Ramlal Aged About 40 Years
6. Thakur Singh S/o Ramlal Aged About 55 Years
7. Dev Singh S/o Late Prathvi Nath Aged About 30 Years
8. Aalam Saay S/o Maan Saay Aged About 58 Years
9. Ram Singh S/o Saadh Ram Aged About 45 Years
10. Sukul Saay S/o Maan Saay Aged About 40 Years
11. Chhattar Saay S/o Dauaa Aged About 47 Years
12. Alakh Ram S/o Bandu Aged About 52 Years
13. Maanjhi Ram S/o Geda Ram Aged About 75 Years



14. Mohar Saay S/o Labdu Raam Aged About 47 Years
15. Budhiya Bai W/o Labdu Ram Aged About 70 Years
16. Dhan Saay S/o Paras Ram Aged About 42 Years
17. Phulbasiya W/o Subran Aged About 65 Years
18. Naan Saay S/o Budahu Aged About 40 Years
19. Kariman S/o Lur Sai Aged About 65 Years
20. Tijo Bai S/o Saadh Ram Aged About 62 Years
21. Jai Lal S/o Heera Saay Aged About 65 Years
22. Sumitra Bai D/o Deena Aged About 50 Years
23. Son Saay S/o Jagnarayan Aged About 28 Years
24. Pilam Saay S/o Jagnarayan Aged About 20 Years
25. Sukh Saay S/o Jagnarayan Aged About 30 Years
26. Budhiyaro Devi W/o Jagnaraya Aged About 47 Years
27. Bal Sai Korram S/o Late Ram Sai Korram Aged About 52 Years

All of the above petitioners No. 2 to 27 are R/o Village Hariharpur
(Gram Panchayat Salhi), Tahsil Udaipur, District Sarguja
Chhattisgarh.

---- Petitioners

Versus

1. Union of India Through Secretary, Ministry of Coal, Shastri Bhawan,
New Delhi.
2. Rajasthan Rajya Vidyut Utpadan Nigam Ltd. Through Its Managing
Director Vidyut Bhawan, Janpath, Jyoti Nagar, Jaipur, Rajasthan.
3. State Of Chhattisgarh Through Its Chief Secretary, Mantralaya Nava



Raipur.

4. District Collector Collectorate, Ambikapur, District Sarguja Chhattisgarh.
5. District Collector Collectorate, Surajpur, District Surajpur Chhattisgarh.
6. Rajasthan Collieries Limited Through Its Managing Director, S - 21, Second Floor, Mahima Trinit Plot No. 05, Swej Farm, New Sanganer Road, Sodala Jaipur Rajsthan 302019.
7. Adani Enterprises Limited Through Its Managing Director Adani House, Ahemedagbad Gujarat.
8. Coal Controller 1, Council House Street Kolkata (W.B.) 700001.

---- Respondents

WPC No. 698 of 2022

1. Ramautar Porte S/o Late Budhan Sai Aged About 48 Years
2. Munshi Prasad S/o Late Budhan Sai Aged About 57 Years
3. Sukh Sai S/o Godhu Aged About 70 Years
4. Thakur Ram Kusro S/o Nana Sai Aged About 45 Years
5. Bhagwati Kusro S/o Ram Prasad Aged About 58 Years
6. Hari Prasad Kusro S/o Budhau Aged About 68 Years
7. Budhram Kusro S/o Chamru Aged About 58 Years
8. Kaushalya W/o Ram Prasad Aged About 65 Years
9. Pawan Singh Kusro S/o Dhujram Aged About 39 Years
10. Baleshwar Singh S/o Dhujram Aged About 30 Years
11. Shukla Kusro S/o Dhujram Aged About 35 Years



12. Gulab Singh Porte S/o Budhan Sai Aged About 54 Years
13. Sant Ram S/o Budhau Aged About 70 Years
14. Thakur Ram S/o Budhan Sai Aged About 59 Years
15. Sohar Kusro S/o Deomun Aged About 30 Years
16. Mahendra S/o Deomun Aged About 28 Years
17. Balindar Singh S/o Deomun Aged About 26 Years
18. Sukhmaniya D/o Deomun Aged About 24 Years
19. Mangli D/o Deomun Aged About 21 Years
20. Rajni W/o Deomun Aged About 45 Years
21. Phulmatiya W/o Maniyar Singh Aged About 38 Years
22. Tilaso W/o Late Thakur Ram Aged About 40 Years
23. Devram Porte S/o Late Thakur Ram Aged About 60 Years
24. Shivnandan Porte S/o Late Thakur Ram Aged About 39 Years
25. Tulsi W/o Krishna Porte Aged About 38 Years

Petitioners No. 1 to 25 resident of Village Salhi (Gram Panchayat Salhi), Tahsil- Udaipur, District- Surguja (C.G.)

26. Shivmangal Sumaar Sai Aged About 58 Years
27. Baldev S/o Sumaar Sai Aged About 56 Years
28. Phulmet S/o Thunu Aged About 80 Years
29. Budhman S/o Thunu Aged About 50 Years
30. Bhuri W/o Gunu Aged About 75 Years R/o

Petitioners No. 26 to 30 resident of Village- Tara (Charpara), Tahsil Prem Nagar, Distt. Surajpur (C.G.)



31. Piyaro W/o Devnath Aged About 75 Years
32. Kaushilya D/o Devnath Aged About 50 Years
33. Pavaro D/o Devnath Aged About 36 Years
34. Sukhram S/o Kishunram Aged About 60 Years
35. Ratuliya D/o Thakur Ram Aged About 40 Years
36. Ratiyabo D/o Devnath Aged About 50 Years
37. Birhuliya S/o Nidhu Ram Aged About 46 Years
38. Dhirjan S/o Nidhu Ram Aged About 30 Years
39. Samal Singh S/o Nidhu Ram Aged About 28 Years
40. Santoshi D/o Nidhu Ram Aged About 25 Years

Petitioner No. 31 to 40 resident of Village- Fattehpur, Tehsil- Udaipur,
District- Surguja (C.G.)

---- Petitioners

Versus

1. Union of India Through- Secretary, Ministry of Coal, Shastri Bhawan,
New Delhi
2. Rajasthan Rajya Vidyut Utpadan Nigam Ltd. Through- Its Managing
Director, Vidyut Bhawan, Janpath, Jyoti Nagar, Jaipur, Rajasthan
3. State of Chhattisgarh Through- Its Chief Secretary, Mantralaya, Nava
Raipur (C.G.)
4. District Collector Collectorate, Ambikapur, Distt.- Sarguja (C.G.)
5. District- Collector Collectorate Surajpur, Distt.- Surajpur (C.G.)
6. Rajasthan Collieries Limited Through- Its Managing Director, S-21,
Second Floor, Mahima Trinita Plot No. 05, Swej Farm, New Sanganer



Road, Sodala, Jaipur Rajasthan 302019

7. Adani Enterprises Limited Through- Its Managing Director, Adani House, Ahmedabad (Gujarat)
8. Coal Controller 1, Council House Street, Kolkata (W.B.)- 700001

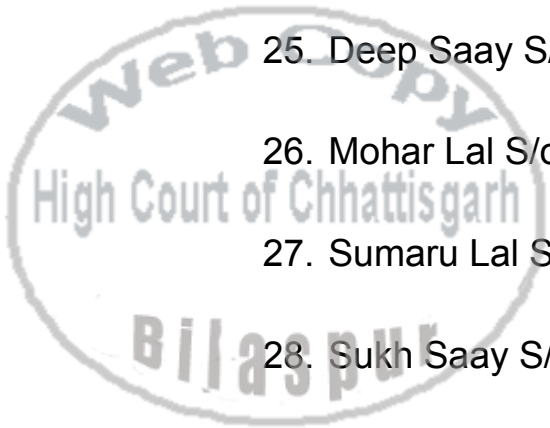
---- Respondents

WPC No. 1247 of 2022

1. Ram Singh Markam S/o Late Fatte Ram Aged About 41 Years R/o Village- Fattehpur (Gram Panchayat Ghatbarra) Tahsil - Udaipur, Distt. Sarguja (C.G.)
2. Kawal Saay Porte S/o Sumaar Saay Aged About 53 Years
3. Sabal Saay S/o Sumaar Saay Aged About 48 Years
4. Asha Ram S/o Sumaar Saay Aged About 46 Years
5. Amrit S/o Thakur Ram Aged About 36 Years
6. Ujit Ram S/o Thakur Ram Aged About 34 Years
7. Righu Ram S/o Samrath Aged About 48 Years
8. Sukhan S/o Sahoran Aged About 60
9. Dharam S/o Sahoran Aged About 58 Years
10. Santu Ram S/o Kamal Saay Aged About 30 Years
11. Bhuneshwar S/o Kamal Saay Aged About 28 Years
12. Birbal S/o Kamal Saay Aged About 20 Years
13. Dilbasiya W/o Kamal Saay Aged About 60 Years
14. Rati Ram S/o Late Manbodh Aged About 60 Years
15. Ram Dhani S/o Late Manbodh Aged About 55 Years



16. Sita Ram S/o Late Manbodh Aged About 50 Years
17. Narihyain D/o Late Shobhnath Aged About 40 Years
18. Jeet Ram S/o Late Khoswa Aged About 70 Years
19. Lakshmi Bai W/o Bhajan Aged About 40 Years
20. Dhaneshwar S/o Late Thakur Aged About 47 Years
21. Paneshwar S/o Late Thakur Aged About 45 Years
22. Mahant Ram S/o Khem Saay Aged About 35 Years
23. Ram Narayan S/o Dev Nath Aged About 40 Years
24. Shyam Narayan S/o Dev Nath Aged About 35 Years
25. Deep Saay S/o Late Budhan Saay Aged About 44 Years
26. Mohar Lal S/o Late Dular Saay Aged About 35 Years
27. Sumaru Lal S/o Late Dular Saay Aged About 25 Years
28. Sukh Saay S/o Late Dular Saay Aged About 21 Years
29. Kunti Bai W/o Late Dular Saay Aged About 50 Years
30. Ful Saay S/o Late Marai Aged About 59 Years
31. Bannu Ram S/o Late Jhina Saay Aged About 50 Years
32. Dhanas Ram S/o Late Jhina Saay Aged About 40 Years
33. Sanas Ram S/o Late Jhina Saay Aged About 35 Years
34. Ujjaar Singh S/o Late Ram Saay Aged About 45 Years
35. Kunwaro D/o Late Genda Ram Aged About 48 Years
36. Ram Kumar S/o Bedhun Aged About 50 Years
37. Thakur Ram S/o Late Pawan Saay Aged About 60 Years





38. Ram Nath S/o Late Pawan Saay Aged About 57 Years
39. Shyam Nath S/o Late Pawan Saay Aged About 52 Years
40. Parbatiya W/o Late Pawan Saay Aged About 80 Years
41. Shiv Charan S/o Late Budhan Saay Aged About 58 Years
42. Sarju Ram S/o Late Genda Ram Aged About 60 Years
43. Jug Nath S/o Late Genda Ram Aged About 58 Years
44. Peeyan Singh S/o Nohar Singh Aged About 28 Years
45. Pawan Singh S/o Nohar Singh Aged About 26 Years
46. Sahat Ram S/o Late Genda Ram Aged About 54 Years
47. Sonaki D/o Nohar Singh Aged About 34 Years
48. Santara D/o Nohar Singh Aged About 32 Years
49. Preeti Singh D/o Nohar Singh Aged About 24 Years
50. Reeti Singh D/o Nohar Singh Aged About 17 Years
51. Jang Saay S/o Late Budhan Saay Aged About 58 Years
52. Sadhram Vishwakarma S/o Late Devo Aged About 58 Years
53. Mangal Sai S/o Late Shobhnath Aged About 30 Years
54. Shiv Prasad S/o Late Shobhnath Aged About 30 Years
55. Budh Kunwar D/o Late Shobhnath Aged About 45 Years
56. Naan D/o Late Shobhnath Aged About 43 Years
57. Bandhu Ram D/o Late Naan Saay Aged About 60 Years

All of the above petitioners No. 2 to 47 all are R/o Village- Fattehpur
(Gram Panchayat Ghatbarra), Tahsil- Udaipur, Distt. Sarguja (C.G.)

---- Petitioners



Versus

1. Union of India Through- Secretary, Ministry of Coal, Shastri Bhawan,
New Delhi
2. Rajasthan Rajya Vidyut Utpadan Nigam Ltd Through- Its Managing
Director Vidyut Bhawan, Janpath Jyoti Nagar, Jaipur, Rajasthan
3. State of Chhattisgarh Through- Its Chief Secretary Mantralaya, Nava
Raipur (C.G.)
4. District Collector Collectorate, Ambikapur Distt. Sarguja (C.G.)
5. District Collector Collectorate, Surajpur Distt. Surajpur (C.G.)
6. Rajasthan Collieries Limited Through- Its Managing Director S-21,
Second Floor, Mahima Trinita Plot No. 05, Swej Farm, New Sanganeer
Road, Sodala Jaipur Rajasthan 302019
7. Adani Enterprises Limited Through- Its Managing Director Adani
House, S.G. Highway, Shantigram Ahmedabad Gujrat 380058
8. Coal Controller Council House Street Kotkata (W.B.) 700001

--- Respondents

WPC No. 2541 of 2020

1. Mangal Sai S/o Late Ram Lal Sai, caste Gond, Aged About 50 Years
R/o Village Hariharpur, Tahsil Udaipur, District Sarguja Chhattisgarh
2. Thakur Ram S/o Late Sukh Ram, Caste Gond, Aged About 52 Years
R/o Village Hariharpur, Tahsil Udaipur, District Sarguja Chhattisgarh.
3. Moti Ram S/o Late Lardhu Ram, Caste Gond, Aged About 55 Years
R/o Village Hariharpur, Tahsil Udaipur, District Sarguja Chhattisgarh.
4. Anand Ram S/o Late Ram Prasad, Caste Gond, Aged About 55
Years, R/o Village Salhi, Tahsil Udaipur, District Sarguja
Chhattisgarh



5. Panik Ram S/o Late Fatte Ram, Caste Gond, Aged About 61 Years
R/o Village Salhi, Tahsil Udaipur, District Sarguja Chhattisgarh.

---- Petitioners

Versus

1. Union of India Through Secretary, Ministry of Coal Shastri Bhawan,
New Delhi.
2. Rajasthan Rajya Vidyut Utpadan Nigam Ltd. Through Its Managing
Director Vidyut Bhawan, Janpad , Jyoti Nagar, Jaipur Rajasthan.
3. State Of Chhattisgarh Through Its Chief Secretary Mantralaya, Nava
Raipur.
4. District Collector Collectorate, Ambikapur District Sarguja
Chhattisgarh
5. District Collector Collectorate, Surajpur District Surajpur Chhattisgarh
6. Rajasthan Collieries Limited S 21 Second Floor, Mahima Trinit Plot
No. 05, Swej Farm, New Sanganer Road , Sodala Jaipur Rajsthan
302019
7. Parsa Kente Collieries Limited S 21 Second Floor, Mahima Trinit
Plot No. 05, Swej Farm, New Sanganer Road, Sodala Jaipur
Rajsthan 302019
8. Coal Controller, 1, Council House Street, Kolkata (West Bengal)
700001

---- Respondents

(Cause title taken from Case Information System)

For Petitioners	:	Mr. Rajeev Shrivastava, learned senior counsel, Mr. Sudeep Shrivastava, Mr. Rohit Sharma, Ms. Rajni Soren, Mr. Sourabh Sahu, Advocates.
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For Respondent-Union of : Mr. Ramakant Mishra, Assistant Solicitor
India General
For Respondent-State of : Mr. H.S.Ahluwalia, Deputy Advocate General.
Chhattisgarh
For Respondent-RRVUNL : Dr. N.K.Shukla, senior counsel, assisted by
and Parsa Kente Collieries Mr. Shailendra Shukla, Advocate.
Ltd.
For Respondent-Rajasthan : Mr. Naman Nagrath, senior counsel, assisted
Collieries Ltd. by Mr. Arjit Tiwari, Advocate.
Date of Hearing : 04.05.2022 and 05.05.2022
Date of Order : 11.05.2022

Hon'ble Mr. Arup Kumar Goswami, Chief Justice

Hon'ble Mr. Rajendra Chandra Singh Samant, Judge

C A V Order

Per Arup Kumar Goswami, Chief Justice

WPC No. 2541/2020, WPC No. 302/2022, 560/2022, 698/2022
and 1247/2022 are listed together. Notice has not been issued in all these
cases by Court as yet. Respondents No. 1 to 6 and 8 in all these petitions
are same. The respondent No. 7 in WPC No. 2541/2020 is not a party in
the other writ petitions. Respondent No. 7 in other writ petitions is same.
However, Mr. Ramakant Mishra, learned Assistant Solicitor General of
India appears for respondent No. 1 and 8, Mr. H.S.Ahluwalia, learned
Deputy Advocate General appears for respondents No. 3, 4 and 5, Mr.
N.Nagrath, learned senior counsel, assisted by Mr. Arjit Tiwari, learned
counsel, appears for respondent No. 6. Dr. N.K.Shukla, learned senior
counsel assisted by Mr. Shailendra Shukla, learned counsel, appears for
respondent No. 2. Dr. Shukla also appears for respondent No. 7 in WPC
No. 2541/2020. As no notice is issued, respondent No. 7 in WPC No.
302/2022, 560/2022, 698/2022 and 1247/2022 is not represented.



2. The subject matter of challenge essentially is acquisition of land for Parsa Coal Block, situated in villages Tara, Janardanpur of District Surajpur and villages Fatehpur, Ghatbara, Hariharpur, Salhi of District Sarguja in the State of Chhattisgarh, under the provisions of the Coal Bearing Areas (Acquisition & Development) Act, 1957 (for short, CB Act) for respondent No. 2.

3. The respondent No. 2 operates thermal power generating stations of total capacity of 7580 MW in the State of Rajasthan and supplies electricity to the entire State of Rajasthan and caters to 37% of need of power to the State. The coal from the Parsa Coal Block is earmarked for captive use for the power plants of respondent No. 2 situated and operating in the State of Rajasthan.

4. At the outset, it will be appropriate to take note of the reliefs prayed for in WPC No. 2541/2020. The same is as follows:

10.1 That, this Hon'ble Court may kindly be pleased to call for the entire records pertaining to the instant land acquisition cases.

10.2 That, this Hon'ble Court may kindly be pleased to issue an appropriate Writ/Order/Direction to quash section 4(1) notification, section 7(1) notification, section 9(1) notification issued under the Coal Bearing Area Acquisition and Development Act, 1957.

10.3 That, this Hon'ble Court may kindly be pleased to issue an appropriate Writ/Order/Direction to quash Section



11(1) Vesting Order issued by the Central Government with regard to Parsa Coal Block.

10.4 That, this Hon'ble Court may kindly be pleased to issue an appropriate Writ/Order/Direction to declare that after enactment of RFCTLARR Act 2013 use of Coal Bearing Area Acquisition and Development Act, 1957 is not permitted.

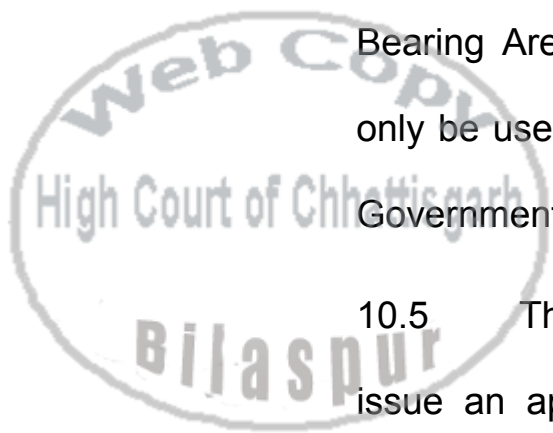
Or in alternate

That this Hon'ble Court may kindly be pleased to issue an appropriate Writ/Order/Direction to declare the Coal Bearing Area Acquisition and Development Act 1957 can only be used for Coal Bearing Land Acquisition for Central Government PSUs.

10.5 That this Hon'ble Court may kindly be pleased to issue an appropriate Writ/Order/Direction to declare that Coal Bearing Area Acquisition and Development Act, 1957 could not be invoked in cases where acquired land ultimately reaches to a private company for mining.

10.6 That this Hon'ble Court may kindly be pleased to issue an appropriate Writ/Order/Direction to declare that inclusion of Coal Bearing Area Acquisition and Development Act, 1957 in Schedule 4 of the RFCTLARR Act 2013 is ultra vires.

10.7 That this Hon'ble Court may kindly be pleased to issue an appropriate Writ/Order/Direction to order a criminal





investigation into complaints of creating of fake Gram Sabha documents.

10.8 This Hon'ble Court may be pleased to pass any other order/relief that this Hon'ble Court may please deem fit and proper in the facts and circumstances of the case including grant of cost of the instant litigation.

5. In WPC No. 1247/2022, WPC No. 698/2022, WPC No. 560/2022 and WPC No.302/2022, essentially, prayers are same. Prayers are made for setting aside Sections 4(1), 7(1), 9(1) and 11(1) notification issued under the CB Act. Declarations are sought that (i) CB Act is ultra vires to the Constitution of India; (ii) CB Act cannot be invoked in case of State Government owned company or where acquired land ultimately benefits a private company; (iii) Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, for short, Act of 2013, and Panchayats (Extension to the Scheduled Areas) Act, 1996, for short, PESA Act of 1996, will apply in cases of acquisition under the CB Act. Prayer is also made for a direction for a Court monitored investigation into the complaint of creating fake Gram Sabha resolutions.

6. In WPC No. 302/2022, 560/2022, 698/2022 and 1247/2022, applications for amendment of writ petition has been filed. In the amendment applications, a fresh plea to challenge the validity of the acquisition on the touchstone of the provisions contained in Chhattisgarh Land Revenue Code, 1959, for short, CG Code, 1959 is made. In all the writ petitions, the respondent No. 2 has filed application for dismissal of the writ petition by way of preliminary objection. Prayer for interim order is also made in all the writ petitions.



7. Dr. Shukla submits that if the writ petitions are not dismissed on consideration of the application for dismissal of the writ petition, though objection is filed in the amendment application, the ground urged in the amendment application being a legal ground, he would have no objection to allow the amendment applications. Learned counsel appearing for the other respondents also submit that they would have no objection to allow the application for amendment. In view of the above submission, arguments are advanced by the learned counsel for the petitioners on the basis of plea taken in the amendment applications.

8. The Parliament enacted the Coal Bearing Areas (Acquisition and Development) Act, 1957 with an objective to establish in the economic interest of India greater public control over the coal mining industry and its development by providing for the acquisition by the State of unworked land containing or likely to contain coal deposits or of rights in or over such land, for the extinguishment or modification of such rights accruing by virtue of an agreement, lease, licence or otherwise and for matters connected therewith.

9. Before proceeding further, it will be appropriate to take a cursory look at the relevant provisions of the CB Act at the outset.

(i). Section 3 of CB Act provides for the appointment of any person as the competent authority by notification for the different provisions of the said Act.

(ii). Section 4 of the Act provides for issuance of preliminary notification in the Official Gazette by the Central Government giving notice of its intention



to prospect for coal, in case it is of the opinion that coal is likely to be obtained from land in any locality.

(iii) Section 5 provides that upon issuance of a notification under section 4(1), any prospecting license which authorises any person to prospect for coal or any other mineral shall cease to have effect and any mining lease in so far as it authorises the lessee or any person claiming through him to undertake any operation in the land shall cease to have effect for so long as the notification under section 4(1) is in force.

(iv) Section 6 contains provision for compensation for any damage done under Section 4.

(v) Section 7 provides that if the Central Government is satisfied that coal is obtainable in the whole or any part of the land notified under Section 4(1), it may, within a period of two years from the date of the said notification or within such further period not exceeding one year in the aggregate as the Central Government may specify, by notification in the Official Gazette, give notice of its intention to acquire the whole or any part of the land or any rights in or over such land, as the case may be.

(vi) As per section 8(1), any person interested in any land in respect of which a notification under section 7(1) has been issued, can submit objection to acquisition of whole or any part of the land or of any right over such land to the competent authority within thirty days from the issuance of the notification. In terms of Section 8(2), the competent authority has to give an opportunity of hearing to the objector and after hearing all such objections and after making such further inquiry as he thinks fit, either make a report in respect of the land which has been notified under section



7(1) or to make different reports in respect of different parcels of such land to the Central Government containing his recommendations on the objections, together with the record of the proceedings, for the decisions of Central Government. Section 8(3) provides that a person shall be deemed to be interested in land who would be entitled to claim any interest in compensation if the land or any rights in or over such land were acquired under the Act.

(vii) Section 9 of the Act empowers the Central Government to issue a declaration, on being satisfied, after considering the report forwarded under Section 8, that any land or rights in or over such land are to be acquired.

(viii) Section 10(1) provides that on publication in the Official Gazette of the declaration under section 9, the land or any rights in or over such land shall vest absolutely in the Central Government free from all encumbrances. Section 10(2) provides that where the rights under any mining lease granted or deemed to have been granted by a State Government to any person are acquired under this Act, the Central Government shall, on and from the date of such vesting, be deemed to have become the lessee of the State Government as if a mining lease under the Mineral Concession Rules had been granted by the State Government to the Central Government, the period thereof being the entire period for which such a lease could have been granted by the State Government under those rules.

(ix) Section 11 provides that notwithstanding anything contained in Section 10, the Central Government may, if it is satisfied that a Government company is willing to comply, or has complied, with such



terms and conditions as the Central Government may think to impose, direct, by order in writing, that the land or the rights in or over the land, as the case may be, shall, instead of vesting in the Central Government under Section 10 or continuing to so vest, vest in the government company either on the date of publication of the declaration or on such other date as may be specified in the direction.

(x) Section 12 contains provisions with regard to the power to take possession of the land acquired and provides that the competent authority may, by notice in writing, require any person in possession of any land acquired under this Act to surrender or deliver possession of the land within such period as may be specified in the notice.

(xi) Section 13 contains the provision for compensation for prospecting lease ceasing to have effect, rights under mining lease being acquired etc.

Section 14 provides the method for determining compensation and states that the Central Government shall constitute a Tribunal consisting of a person who is or has been or is qualified to be a judge of the High Court for the purpose of determining compensation. Section 14(5) provides that the Tribunal after hearing the dispute will make an award determining the amount of compensation which appears to it to be just and specify the person or persons to whom the compensation shall be paid and in making the award the Tribunal shall have regard circumstances of each case and to the provisions of the Act.

(xii) Section 19 empowers the Central Government to direct that any or all of the powers or duties which may be exercised or discharged by it under this act shall in all such circumstances and under such conditions, if any,



as may be specified in the notification be exercised or discharge also by any person specified in this behalf in the notification.

(xiii) Section 20 of the Act contains the provision for appeals against the award of the Tribunal under Section 14 of the Act and provides that any person aggrieved by the award may prefer an appeal to the High Court, within whose jurisdiction the land or some portion of the land which has been acquired is situated, within a period of 30 days from the date of award. Further, section 20(2) provides that any person aggrieved by an order made by a competent authority or by any other person may prefer an appeal to the Central Government within a period of 21 days from the date of the order.

(xiv) Section 24 of the Act, inter-alia, provides that subject to any rules made under the Act, every notice or order issued or made under the Act shall be published in the Official Gazette and also published in the locality in such manner as may be prescribed if the notice or order is of a general nature affecting a number of persons.

10. The Parsa Coal Block was originally allotted to the Chhattisgarh State Power Generation Company Ltd. In view of the decision rendered by the Hon'ble Supreme Court in *Manohar Lal Sharma v. Principal Secretary & Others*, reported in (2014) 9 SCC 516, the Hon'ble Supreme Court held that allocation of coal blocks through the Government Dispensation Route suffers from the vice of arbitrariness and legal flaws and accordingly, the allotment of all the coal blocks were cancelled. Subsequent to the passing of the judgment on 21.10.2014, the Parliament promulgated Coal Mines (Special Provisions) Ordinance 2014, (for short, 'the Ordinance of 2014')



and Coal Mines (Special Provisions) Rules, 2014 (for short, the Rules of 2014) for the purpose of framing rules for auction and allotment of Coal Blocks which were subject matter of cancellation by the Hon'ble Supreme Court. In exercise of powers conferred under Section 6 of the Ordinance of 2014 read with Coal Mines (Special Provisions) Second Ordinance of 2014 and Rules of 2014, the Central Government has appointed Nominated Authority. The Central Government also issued an order under Rule 8(2) of the Rules of 2014 as amended to the Nominated Authority for allotment of coal mines pursuant to Section 5 of the Ordinance of 2014. The Nominated Authority, vide notification dated 18.02.2015, issued allotment document and invited applications from Government companies for allotment of coal mines. In order to meet the coal requirement of respondent No. 2 for various thermal power plants in the State of Rajasthan, finding that Parsa Coal Block is most suitable, the respondent No. 2 submitted an online application on 26.02.2015 for allotment of Parsa Coal Block. Allotment agreement was executed between the Nominated Authority and the respondent No. 2 in 30.03.2015 and the First Amendment was executed on 08.09.2015. Subsequently, the Nominated Authority issued allotment order dated 08.09.2015 allotting Parsa Coal Mines located in Hasdeo-Arand Coalfields in Surguja District and Surajpur District of the State of Chhattisgarh, to respondent No. 2.

11. The respondent No. 2 applied under Section 3 of the CB Act for appointment of Competent Authority and pursuant thereto, the Government of India, Ministry of Coal, vide notification dated 24.04.2017 appointed the Competent Authority. Notification under Section 4(1) was issued on 12.07.2017. Notification under Section 7(1) was issued on 15.11.2017 and



amendment to the said notification was issued on 27.12.2017. The respondent No. 8, Coal Controller, issued a no objection certificate under Section 8(2) vide letter dated 23.02.2018 stating that no objection is received in respect of acquisition of whole or any part of the land as indicated in schedule of the notification. Notification under Section 9(1) was issued on 21.03.2018. Notification under Section 11 was issued on 02.08.2018.

12. Mr. Sudeep Shrivastava, learned counsel, appearing for the petitioner in WPC No. 2541/2020, placing reliance on Rule 3(2) of the Coal Bearing Areas (Acquisition & Development) Rules, 1957, for short, Rules of 1957, which was framed in exercise of powers conferred by Section 27 of the CB Act, has assiduously urged that notifications issued under Section 4, 7 and 9 were not personally served upon the people in the locality and as such, petitioners and others were unaware of the acquisition proceedings initiated and therefore, the entire land acquisition proceeding is vitiated for flagrant violation of the provisions of CB Act. In this connection, he has relied on paragraph 9.11 of the writ petition as well as on reply to para 10 to 13 to the application for dismissal, filed on 12.12.2021. Accordingly, he has contended that the plea taken by respondent No. 2 in the application for dismissal of the writ petition that there is gross delay in approaching the Court as well as not raising objection to the notifications is without any substance and is liable to be summarily rejected. Even when some villagers, who somehow coming to know about the notifications, had raised objection before the respondent No. 8, such objections were dismissed by the Coal Controller by order dated 25.04.2018 without assigning any reason. The Parsa Coal Block was already prospected and therefore,



issuance of section 4(1) notification is unauthorised in law and as such, even on that count, the land acquisition proceedings are liable to be quashed. Relying on Annexure 'B' of rejoinder on behalf of the petitioners to the return filed by the respondent No. 2, he submits that there are 99 Coal Blocks for allotment through auction out of which 18 are in Madhya Pradesh and therefore, there was no justification for acquiring land in respect of Parsa Coal Block for catering to the needs of the respondent No. 2 when there are several other Coal Blocks available between the State of Rajasthan and Parsa Coal Block in the State of Chhattisgarh. Submission is also advanced that out of 1255.447 Hectare Area, only 1129.37 Hectare Area is coal bearing land and therefore, invocation of CB Act for acquisition of land is not permissible. It is submitted that inclusion of CB Act in Fourth Schedule of the Act of 2013, as a result of which the provisions of the Act of 2013 was not to apply in respect of CB Act, is ultra vires on the ground that the other 12 Acts in respect of which provisions of the Act of 2013 are not made applicable essentially relate to acquisition of land in a linear manner and not a large area like a Coal Block which results in displacement of large number of people. Under the Act of 2013, in terms of Section 41, no acquisition of land, as far as possible, shall be made in scheduled areas and he submits that Parsa Coal Block is located in scheduled area and even if it was to be acquired under the Act of 2013, same is to be done only as a last resort. He submits that after enactment of Act of 2013 no land acquisition proceedings can be initiated for coal bearing land under the CB Act as provisions of Act of 2013 is beneficial to the land oustees. It is further submitted that in any view of the matter, the Central Government could not have vested land in favour of respondent



No. 2, which is a government company of the State Government and not of the Central Government and there is no previous instance of such vesting in a State Government company. The respondent No. 2 had formed a joint venture company, which is respondent No. 6 in the petitions, in which the respondent No. 2 is having only 26% stake, with Adani Enterprises Limited (AEL), a private company, and the respondent No.6 joint venture company has been appointed as the Mining Development and Operation Contractor (MDO) and therefore, the ultimate beneficiary is the private entity, more so, as 29% of the 'rejects' would become the property of respondent No.6. He has submitted that fake Gram Sabha resolutions have been created for the purpose of acquisition of land. Learned counsel relies on the decisions of the Hon'ble Supreme Court in *Manohar Lal Sharma* (supra), *Samatha v. State of A.P & Others*, reported in (1997) 8 SCC 191 and *Kedar Nath Yadav v. State of West Bengal & Others*, reported in (2017) 11 SCC 601.

13. Mr. Rajeev Shrivastava, learned senior counsel, while endorsing the submissions of Mr. Sudeep Shrivastava, contends that the provisions of Section 3, 4, 7, 9, 11 and 12 of the CB Act are contrary to the provisions of Section 165(6) and 165 (6-a to 6-f), which deal with transfer of Bhumiswami rights and therefore, the Competent Authority appointed under the CB Act has no right to get the Bhumiswami rights transferred from the petitioners and issue notification with regard to vesting of the land of the petitioners with either the Central Government or in favour of respondent No. 2 and therefore, in terms of Article 254(2) of the Constitution, the provisions of the C.G Code, 1959 will prevail and to that extent, the provisions of the CB Act are ultra vires.



14. Mr. Rajeev Shrivastava submits that though the Constitution Bench in *M/s. Burrakur Coal Co. Ltd. v. The Union of India & Others*, reported in *AIR 1961 SC 954*, and in *State of West Bengal v. Union of India*, reported in *AIR 1963 SC 1241*, had upheld the validity of the CB Act, this Court can consider the validity of the CB Act. It is submitted that while in *M/s. Burrakur Coal Co. Ltd.* (supra), the validity was judged on the touchstone of Article 19(1)(g) and 31(A) of the Constitution, in *State of West Bengal* (supra), the Hon'ble Supreme Court was considering the legislative competency of the CB Act. He placed reliance on *Amarendra Pratap Singh v. Tej Bahadur Prajapati & Others*, reported in *(2004) 10 SCC 65*. It is submitted that under the provisions of the Schedule Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006, for short, FR Act, 2006, the petitioners have community rights over the forest area and the provisions of CB Act are inconsistent with the same. He has also referred to Section 13 of the FR Act, 2006, which provides that save as otherwise provided in that Act and the provisions of the PESA Act of 1996, the provisions of the Act shall be in addition to and not in derogation of the provisions of any other law for the time being in force. He has submitted that the CB Act is also inconsistent with PESA Act of 1996 as provisions of consultation with the Gram Sabha or the Panchayats before making acquisition of land in the scheduled area for development projects and before re-settling or rehabilitating persons effected by such projects is conspicuously absent in the CB Act.

15. Mr. Sudeep Shrivastava also placed judgments rendered by the Hon'ble Supreme Court in *K.T.M.T.M. Abdul Kayoom & Another v. Commissioner of Income Tax, Madras*, reported in *AIR 1962 SC 680*, *B.*



Shama Rao v. Union Territory of Pondicherry, reported in *AIR 1967 SC 1480*, and *Islamic Academy of Education & Another v. State of Karnataka & Others*, reported in *(2003) 6 SCC 697*, to contend that this Court can reopen the question of validity of CB Act.

16. Dr. Shukla, learned senior counsel, appearing for respondent No. 2 (as well as for respondent No.7 in WPC No. 2541/2020), submits that the validity of the CB Act having been upheld in *M/s. Burrakur Coal Co. Ltd.* (supra) and *State of West Bengal* (supra), the jurisdiction of the High Court is ousted to entertain a challenge to the validity of the CB Act, which applies to both explored and unexplored Coal Blocks. Dr. Shukla submits that non-coal bearing land is required for ancillary use of infrastructure and over burden (OB) dump area, etc. It is submitted that acquisition of land under the CB Act is not controlled or superseded by the Act of 2013 in view of Section 105 read with Fourth Schedule of the Act of 2013. However, in view of promulgation of Right to Fair Compensation and Transparency in Land Acquisition, rehabilitation and Resettlement (Removal of Difficulties) Order, 2015, for short, the Order of 2015, the provisions of the Act of 2013 would apply to CB Act to the extent indicated therein. He has submitted that the provisions of the Act of 2013, as mandated, are scrupulously followed. The provision of Section 41(3) of the Act of 2013 requiring holding of Gram Sabha before issuance of Section 4 notification under the Act of 2013 for acquisition of land in scheduled areas is not applicable when the land is acquired under the CB Act. When no Gram Sabha resolution is required for the purpose of acquisition under the CB Act, the plea taken that fake Gram Sabha resolutions had been prepared, is an attempt to side-track and muddle the issue. The contention advanced that



inclusion of CB Act in the Fourth Schedule of the Act of 2013 is bad in law, is wholly misconceived, as having regard to the object for which the CB Act was enacted, the CB Act was taken out of the ambit and purview of the applicability of the Act of 2013, save and except as provided for by the Order of 2015. It is further submitted that the PESA Act of 1996 is not applicable to acquisition of land under the CB Act and in this connection, he places reliance on the decision of a Division Bench in *Naresh Singh & Others v. Union of India & Others*, reported in *AIR 2009 MP 26*. He submitted that the petitioners had not raised any objection at any point of time with regard to the notifications issued under the CB Act and have falsely claimed that notifications are not made public with an ulterior motive. It is submitted by him that the contention of the petitioners that notifications under Section 4, 7, 9, and 11 are to be served personally, is wholly misconceived, as under the provisions of Section 24 of the CB Act read with Rule 3(2) of the Rules of 1957, only a notice or order, if directed against an individual, is required to be served by delivering or tendering a copy thereof duly signed to the person on whom it is to be served and there is no such requirement under Section 3(1) for service of any notice or order which is of general nature or affecting a number of persons. Sections 4 and 7 notifications affected a number of persons and therefore, the very premise of the petitioners with regard to service of notice is fallacious. Even after being aware of the developments, one petition came to be filed after more than two years and four petitions came to be filed after nearly three and a half years of issuance of notification dated 02.08.2018 under Section 11(1) of the CB Act. Dr. Shukla further submitted that the petitions are filed for illegal gain and wrongful bargain and on the ground of



unexplained gross delay, the petitions, even otherwise, are liable to be dismissed at the threshold. He further submitted that the plea advanced with regard to Section 165(6) of the C.G. Code, 1959 is without any substance as the issue raised had been decided in ***Naresh Singh*** (supra). He has further submitted that Stage I Forest Clearance is duly granted by the Ministry of Environment and Climate Change vide letter dated 13.02.2019 in respect of Parsa Coal Block for diversion of necessary forest land by following the prescribed procedure under the Forest Conservation Act, 1980, for short, Act of 1980, with the approval of the competent authority.

17. Dr. Shukla further submits that in ***Dinesh Kumar Soni v. Union of India***, WPC No. 371/2019, wherein respondent No. 2 & 6 are parties, in the context of Parsa East and Kanta Basan Coal Blocks, a question whether a Government entity can form a joint venture with a private entity to function as a mining operator is raised before the Hon'ble Supreme Court and this aspect of the matter was suppressed by the petitioner inasmuch as Mr. Sudeep Shrivastava, learned counsel, had himself filed an impleadment application in WPC No. 371/2019 and therefore, WPC No. 2541/2020 is liable to be dismissed on the ground of suppression of material facts. In any view of the matter, this Court ought not to consider the issue regarding contractual arrangement between the respondents No. 2 and 6 as the issue is already pending consideration before the Hon'ble Supreme Court. It is further submitted that two appeals are pending before the National Green Tribunal (NGT) in respect of some issues flagged in these petitions: Appeal No. 16/2018 (***Central Zone***), ***Hasdeo Bachao Aranya Sangharsh Samiti v. Union of India & Others***, relating to presence of elephant corridor



and diversion of forest areas for Coal Blocks as well as Appeal No. 185/2018 (*Central Zone*) **Sudeep Shrivastava v. Union of India**, relating to grant of forest clearance of the present mining project. He submits that these writ petitions are an abuse of the process of the Court.

18. Dr. Shukla places reliance on the judgments rendered by the Hon'ble Supreme Court in *Director of Settlements, A.P. and Others v. M.R. Apparao and Another*, reported in (2002) 4 SCC 638, *Binoy Viswam v. Union of India and Others*, reported in (2017) 7 SCC 59, *Suganthi Suresh Kumar v. Jagdeeshan*, reported in AIR 2002 SC 681, *Balco Employees Union (Regd.) Vs. Union of India and Others*, reported in (2002) 2 SCC 333, and *Orissa Mining Corporation Ltd. v. Ministry of Environment & Forest & Others*, reported in (2013) 6 SCC 476.

19. In response to the submissions of Dr. Shukla relating to pendency of litigation before the Hon'ble Supreme Court and NGT, relying on the reply to the application filed by the respondent No. 2 for dismissal of the writ petition, it is submitted by Mr. Sudeep Shrivastava that even if the Hon'ble Supreme Court declares the joint venture agreement void and illegal, the issue of land acquisition, which the petitioners have challenged, would remain intact as the said issue has not been raised in any forum. Therefore, this Court has the jurisdiction and competency to decide the legality or otherwise of the land acquisition process. He has also categorically submitted that no relief for cancellation of joint venture agreement have been sought in the present petitions. Mr. Sudeep Shrivastava submits that challenge made to the grant of environment clearance in Appeal No. 16/2018 as well as 185/2018 are separate causes of action and the same has nothing to do with land acquisition.



20. Mr. Naman Nagrath, essentially, endorses the submissions of Dr. Shukla and contends, in any case, no case for interim order is made out. It is submitted by him that respondent No. 6 is only a mining contractor, who shall charge mining fees for extracting coal from Coal Blocks and supplying it to the respondent No.2. The respondent No.6 has no right over the coal mines and coal extracted. He has further submitted that even if the agreement between the respondent No. 2 and respondent No.6 is held to be bad in law by the Hon'ble Supreme Court, Parsa Coal Block shall continue to remain vested with the respondent No.2, which is a Government company. He places reliance on a judgment of Hon'ble Supreme Court in the case of *N.G Project Limited v. Vinod Kumar Jain & Others*, reported in *2022 SCC Online SC 336*, to contend that while entertaining a writ petition an/or granting stay which ultimately may delay the execution of mega projects, the High Courts should be extremely careful and circumspect in exercise of its discretion while entertaining such petitions and/or while granting stay in such matters.

21. Mr. Ramakant Mishra, learned Assistant Solicitor General of India has also echoed the submission of Dr. Shukla and submits that the case presented by the petitioners is devoid of any merit and on the ground of gross delay only, the writ petitions are liable to be dismissed at the threshold.

22. Mr. H.S. Ahluwalia, learned Deputy Advocate General, appearing for the State, in response to an order of this Court dated 28.04.2022, on the basis of an affidavit filed on behalf of the respondents No. 3 to 5, submits that an on application seeking permission for cutting up trees, a sum of Rs.2,35,200/- was directed to be deposited by the respondent No. 2 for



cutting of 1,568 numbers of trees in terms of the C.G. Code, 1959 and the Rule 10 thereunder and on deposit of the said sum, an order dated 24.03.2022 was passed by the Collector, Surajpur granting permission to cut 1,568 numbers of trees on condition that the respondent No.2 shall plant double the number of trees, i.e. 3,136, to compensate for cutting of 1,568 trees and that the trees shall be cut by the Forest Department, for which a sum of Rs. 58,35,000/- was deposited. However, tree felling activities could not be carried out after felling about 300 trees due to protest of the local people.

23. We have considered the submissions of the learned counsel for the parties and have perused the materials on record.

24. We will first deal with the challenge mounted with regard to validity of CB Act. As noticed earlier, validity of CB Act was upheld in *M/s. Burrakur Coal Co. Ltd.* (supra) and *State of West Bengal* (supra).

25. In *Binoy Viswam* (supra), the Hon'ble Supreme Court laid down that the power to strike down primary legislation enacted by the Union or the State Legislatures is on limited grounds and the Courts can strike down legislation either on the basis that it falls foul of federal distribution of powers or that it contravenes fundamental rights or other Constitutional rights/provisions of the Constitution of India. There is always a presumption in favour of constitutionality of an enactment and the burden is upon him, who attacks it, to show that there has been a clear violation of the constitutional principles. A legislation cannot be challenged simply on the ground of unreasonableness because that by itself does not constitute a ground. There is no third ground available to invalidate any piece of



legislation. It is further observed by the Hon'ble Supreme Court that a legislation cannot be declared unconstitutional on the ground that it is 'arbitrary' inasmuch as examining as to whether a particular Act is arbitrary or not implies a value judgment and the courts do not examine the wisdom of legislative choices and, therefore, cannot undertake this exercise. The plea of unreasonableness, arbitrariness, proportionality, etc. always raises an element of subjectivity on which a court cannot strike down a statute or a statutory provision, especially when the right to property is no more a fundamental right.

26. To contend that it is permissible for this Court to reopen the question of validity of the CB Act, reliance was placed in ***B. Shama Rao*** (supra) wherein the Hon'ble Supreme Court had observed that a decision is binding not because of its conclusion but in regard to its ratio and the principle laid down therein. Reliance was also placed in ***K.T.M.T.M. Abdul Kayoom & Another*** (supra), to contend that each case must turn upon its own facts and therefore, there is no impediment for this Court to consider the validity of the CB Act. Reliance was also placed in ***Islamic Academy of Education & Another*** (supra), to contend that the *ratio decidendi* of the judgment has to be found out on the reading of the entire judgment and that by reading a line here and there from the judgment, one cannot find out the entire ratio decided of the judgment.

27. There cannot be any dispute with regard to the propositions laid down in the aforesaid judgments. However, the question is whether an Act, namely, CB Act, which was held to be not unconstitutional and declared to be valid law, can be declared by this Court to be unconstitutional.



28. In *Director of Settlements, A.P. and Others Vs. M.R. Apparao and Another*, reported in *(2002) 4 SCC 638*, the Hon'ble Supreme Court held that Article 141 of the Constitution unequivocally lays down that the law declared by the Supreme Court shall be binding on all Courts within the territory of India and that a Judgment of the Court has to be read in the context of questions which arose for consideration in the case in which the judgment was delivered. What is binding is the principle underlying a decision and a judgment of the Supreme Court cannot be assailed on the ground of certain aspects were not considered or the relevant provisions were not brought to the notice of the Court. A judgment of the High Court which refuses to follow the decision is a nullity.

29. In *Suganthi Suresh Kumar vs. Jagdeeshan*, reported in *AIR 2002 SC 681*, the Hon'ble Supreme Court laid down that it is impermissible for the High Court to overrule the decision of the apex Court on the ground that Supreme Court laid down the legal position without considering any other point. It is not only a matter of discipline for the High Courts, it is the mandate of the Constitution as provided in Article 141 of the Constitution that the law declared by the Supreme Court shall be binding on all courts within the territory of India. Relying on the decision in the case of *Anil Kumar Neotia vs. Union of India*, reported in, *AIR 1988 SC 1353*, the Hon'ble Supreme Court reiterated that the High Court cannot question the correctness of the decision of the Supreme Court even though the point sought before the High Court was not considered by the Supreme Court.

30. In view of the above, it will be impermissible for this Court to venture into examining as to whether the CB Act is *ultra vires* for the reason that according to Mr. Rajeev Shrivastava, the provisions of CG Code, 1959,



the FR Act, 2006 or the PESA Act of 1996 are not in sync with the provisions of the CB Act and that when the Hon'ble Supreme Court decided validity of CB Act, CG Code, 1959, the FR Act, 2006 or the PESA Act of 1996 had not come into being.

31. In view of the above discussion, the plea raised with regard to unconstitutionality of the CB Act has no merit.

32. In the pleadings as well as prayers made, tangentially, declaration is sought that a Government entity cannot form a joint venture with a private entity to function as a mining operator. This issue is pending consideration, as submitted by the learned counsel for the parties, before the Hon'ble Supreme Court. Issues raised before the NGT are also touched upon in these petitions. Therefore, we will not proceed to consider the aforesaid aspects of the matter and will confine our deliberations to the validity of the land acquisition process which the learned counsel for the petitioners had categorically submitted is the issue involved in the present writ petitions.

On due consideration, we are not inclined to hold that there was deliberate suppression of material facts with regard to pending litigation before the Hon'ble Supreme Court and the NGT as contended by the learned counsel for the respondents.

33. In *Balco Employees Union* (supra), the Hon'ble Supreme Court held that Sub-section (6) of Section 165, before and after its amendment on 29.11.1976, did not contain any provision prohibiting the giving of tribal land by way of lease to non-tribals. Prior to its amendment, a land could be transferred to a non-tribal after getting permission of Revenue Officer not below the rank of the Collector, who is required to give his reasons for



granting the permission. After amendment on 29.11.1976 by virtue of provision of sub-section (6), lease of land is taken out of the purview of sub-section 6(1) of the CG Code, 1959 and accordingly, it is held that even if BALCO had been a non-public sector undertaking, the transfer of land to it was not in violation of the CG Code, 1959. It is observed that the decision rendered in ***Samatha's case*** (supra) is inapplicable to the said case as the statutory provision did not contain any absolute prohibition of the type contained in Section 3(1) of the A.P. Scheduled Areas Land Transfer Regulation, 1959, which was the basis for the decision in ***Samatha's*** case.

34. It is to be noted that a Division Bench of the Madhya Pradesh High Court, in ***Naresh Singh*** (supra), while dealing with Section 165(6) of the Madhya Pradesh Land Revenue Code, 1959, now CG Code, 1959, at paragraph 8, held that the said provision cannot and does not prohibit the acquisition of land belonging to an aboriginal tribe under law, such as the CB Act and it applies only to the transfer of a right of a Bhumiswami belonging to a tribe by way of sale, lease, mortgage etc. to a person not belonging to the the aboriginal tribe. It is further held that Section 165(6) does not prohibit the Government to transfer any land belonging to aboriginal tribe acquired by it under law such as the CB Act or the Land Acquisition Act, 1894, (for short, Act of 1894) to a Government Company in any manner. It was noted that at paragraph 117 of ***Samatha*** (supra), the Hon'ble Supreme Court had observed that transfer of a government land to a government company is excluded from prohibition in para 5(2)(b) of the Fifth Schedule of the Constitution of India and Section 3(1)(a) of the A.P. Scheduled Area Land Transfer Regulation, 1959, which had fallen for consideration. Accordingly, it was held that acquisition of land of the tribals



in the scheduled areas and transfer of such land to a government company is not prohibited under Section 165 (6).

35. Mr. Rajeev Shrivastava, learned senior counsel has submitted that the aforesaid judgment will not continue to hold the field as now a proviso has been inserted with effect from 23.08.2014 to Section 165(6) providing that the provision of Section 165(6) shall not be applicable to the land acquired under the Act of 2013 and therefore, in absence of any exclusion of CB Act, Section 165(6) will apply to areas as indicated in clauses (I) & (ii) thereof, which are predominantly inhabited by aboriginal tribes. He has further submitted that of sub-section (6-f) of Section 165 of the CG Code, 1959 provides that the provisions of sub-section (6-a) to (6-e) shall have effect, notwithstanding anything to the contrary contained in the CG Code, 1959 or any other law for the time being in force, and therefore, acquisition of a land for a government company under CB Act is impermissible.

36. The argument advanced is without any merit. The proviso as inserted will not in any manner whittle down the ratio laid down in ***Naresh Singh*** (supra). In view of declaration already made in ***Naresh Singh*** (supra) in relation to CB Act that acquisition of land of the tribals in the scheduled areas and transfer of such land to a government company is not prohibited, by means of the proviso, only the Act of 2013 was held to be not applicable.

37. Section 165 deals with the rights of transfer in respect of a Bhumiswami. Section 165 (1) provides that subject to the other provisions of this section and the provisions of Section 168, a Bhumiswami may transfer any interest in his land. Section 165(6) provides that



notwithstanding anything contained in sub-section (1), the right of Bhumiswami belonging to a tribe which has been declared to be an aboriginal tribe by the State Government by a notification in that behalf, for the whole or part of the area to which the CG Code, 1959 applies, shall (i) in such areas as are predominantly inhabited by aboriginal tribes and from such date as the State Government may, by notification specify, not be transferred nor it shall be transferable either by way of sale or otherwise or as a consequence of transaction of loan to a person not belonging to such tribe in the area specified in the notification; (ii) in areas other than those specified in the notification under clause (i), not to be transferred or be transferable either by way of sale or otherwise or as a consequence of transaction of loan to a person not belonging to such tribe without the permission of a Revenue Officer not below the rank of Collector, given for reasons to be recorded in writing, provided that the provisions of this sub-section shall not be applicable to the land acquired under the Act of 2013. Section 165(6-a) to 165(6-ee) {(6-ee) has been omitted on 25.01.2006} essentially deal with the right of a Bhumiswami other than the Bhumiswami belonging to a tribe which has been declared to be an aboriginal tribe, to transfer land and the manner of such transfer, etc.

38. When it was held in *Naresh Singh* (supra) that acquisition of land of an aboriginal tribe in the scheduled areas and transfer of such land to a government company is not prohibited, it cannot be countenanced that the government cannot transfer any land acquired by it under the CB Act to a Bhumiswami, who is better placed than an aboriginal tribe. Further more, Section 264 of the CG Code, 1959 provides that nothing contained in the Code shall apply to a person who holds land from the Central Government.



39. In *Amrendra Pratap Singh* (supra), it was observed by the Hon'ble Supreme Court that tribals being historically weaker sections of the society need to be settled, to be taken care of by the protective arm of laws and to save them from falling prey of unscrupulous device so that they may prosper and by an evolutionary process join the main stream of the society. In the said case, having regard to the provisions as contained in Section 7-D of the Orissa Scheduled Areas Transfer of Immovable Property (By Scheduled Tribes) Regulations, 1956, the Hon'ble Supreme Court observed that a tribal may acquire title by adverse possession over the immovable property of another tribal by reference to Para 7-D of the Regulations read with Article 65 and Section 27 of the Limitation Act, 1963, but a non-tribal can neither prescribe nor acquire title by adverse possession over the property belonging to a tribal as the same is specifically prohibited by a special law promulgated by the State legislature or the Governor in exercise of the power conferred in that regard by the Constitution of India. A general law cannot defeat the provisions of a special law to the extent to which they are in conflict; else an effort has to be made to reconcile the two provisions by homogeneous reading.

40. The object of FR Act, 2006 is to recognize and vest the forest rights and occupation in forest land in forest dwelling Scheduled Tribes and other traditional forest dwellers who have been residing in such forests for generations but whose rights could not be recorded. Further, the Act provides for a framework for recording forest rights so vested and the nature of evidence required for such recognition and vesting in respect of the forest land. In *Naresh Singh* (supra), the Division Bench observed that the lands required for mining of coal by SECL in the said case is located in



the Scheduled Areas and is owned by the tribals. Article 244(1) and Fifth Schedule of the Constitution makes provision to ensure that the tribals residing in the Scheduled Areas are not exploited and their rights over the land are protected. This is because tribals living in Scheduled Areas are dependent on the agricultural land for their living. Any project of the Central Government or the State Government or the government company owned by the Central Government or the State Government which deprives the tribals in the Scheduled Areas of their land by acquisition either under the Act of 1894 or the CB Act must ensure that such tribals are rehabilitated and resettled with an alternative source of living in accordance with the policy of the appropriate government.

41. With regard to submission advanced on the basis of FR Act, 2006, it will be appropriate to take note of the decision rendered in ***Orissa Mining Corporation Ltd.*** (supra). In the aforesaid case, it has been observed that the FR Act, 2006, neither expressly nor impliedly, has taken away or interfered with the right of the State over mines or minerals lying underneath the forest land, which stand vested in the State. State holds the natural resources as a trustee for the people. Section 3 of the FR Act, 2006 does not vest such rights on the Scheduled Tribes or other traditional forest dwellers. PESA Act of 1996 speaks only of minor minerals. It provides that the recommendation of Gram Sabha shall be made mandatory prior to grant of prospecting licence or mining lease for minor minerals in the Scheduled Areas. Accordingly, it was held that the State Government has the power to reserve any particular area for Bauxite mining for a Public Sector Corporation.

42. Section 4(i) of the PESA Act of 1996 Act is quoted below:



“4. Exceptions and modifications to Part IX of the Constitution — Notwithstanding anything contained under Part IX of the Constitution, the Legislature of a State shall not make any laws under that Part which is inconsistent with any of the following features, namely:—

xxx xxx xxx

(i) The Gram Sabhas or the Panchayats at the appropriate level shall be consulted before making the acquisition of land in the Scheduled Areas for development projects and before re-settling or rehabilitating persons affected by such projects in the Scheduled Areas; the actual planning and implementation of the projects in the Scheduled Areas shall be coordinated at the State level;”

43. Coal is a major mineral. The provisions of the PESA Act of 1996 are not applicable to major minerals which is evident from Section 4(k) of the PESA Act of 1996. In ***Naresh Singh*** (supra), Division Bench of the Madhya Pradesh High Court held that It will be clear from the language used in section 4 of the PESA Act of 1996 that the embargo therein is not on Parliament but on Legislature of a State. It was further held that the acquisition of land in the Scheduled Areas in that case being for mining by a government company under law made by Parliament, namely, the CB Act or the Act of 1894, section 4(i) of the 1996 Act does not apply to such acquisition. Therefore, there can be no applicability of PESA Act of 1996 in respect of acquisition made under CB Act.

44. The argument advanced by Mr. Sudeep Shrivastava that after the



enactment of Act of 2013, the CB Act cannot be invoked for the purpose of land acquisition and that inclusion of CB Act in Fourth Schedule of Act of 2013 is ultra vires, is without any merit.

45. Section 105 of the Act of 2013 provides that the provisions of the Act shall not apply to enactments relating to land acquisition specified in the Fourth Schedule. CB Act is listed at S.No. 11 of the Fourth Schedule. Section 105(3) provides that the Central Government shall by notification direct that any of the provisions of the Act of 2013 relating to the determination of the compensation in accordance with First Schedule and rehabilitation and resettlement specified in Second and infrastructural amenities in Third Schedule shall apply to the cases of land acquisition under the enactments specified in the Fourth Schedule.

46. In exercise of powers conferred by sub-section (1) of Section 103 of Act of 2013, the Central Government issued Order of 2015, which came into force w.e.f. 01.09.2015. By the aforesaid Order, the provisions of the Act of 2013 relating to the determination of compensation in accordance with the First Schedule, rehabilitation and re-settlement in accordance with the Second Schedule, and infrastructural amenities in accordance with the Third Schedule, are to apply to all cases of land acquisition under the enactments specified in the Fourth Schedule of the Act of 2013. It is to be noted that Section 41 of the Act of 2013 which provides for consent of Gram Sabha in case of land acquisition under the Act of 2013 is not applicable in respect of acquisition under CB Act. CB Act is a special Act for acquisition which provides for acquisition of land in case the Central Government is of the opinion that the land or any part thereof contains coal. CB Act provides a complete mechanism. Section 26 to 30 as well as



First Schedule of the Act of 2013, which relate to determination of compensation; Section 31 and Second Schedule, which relate to rehabilitation and resettlement and Section 32 and Third Schedule, which relate to provisions for infrastructural amenities in re-settlement area are now made applicable in respect of acquisition under the CB Act. As the CB Act is a valid piece of legislation for a specific purpose, the Parliament has, advisedly, included the CB Act in the Fourth Schedule of the Act of 2013.

47. A contention is raised that in the instant case, Section 4(1) notification under the CB Act could not have been issued at the first instance on the ground that Parsa Coal Block was already prospected by Chhattisgarh State Power Generation Company Ltd. In *M/s. Burrakur Coal Co. Ltd.* (supra), an argument was advanced that the CB Act applies to ‘unworked’ coal mines which according to the petitioners therein, meant virgin lands – and not to those which are being worked at present or which were worked in the past. The Hon’ble Supreme Court repelled the contention holding that even if the preamble is taken into consideration, the expression ‘unworked land’ occurring in the preamble should be given its ordinary meaning i.e. to say land which was not being worked at the time of notification issued under the CB Act, which would include dormant mines. It was further held that the provisions of the CB Act and in particular, Section 4(4) and Section 5(b) clearly militate against the contention that the Act was intended to apply only to virgin lands, to the exclusion of land on which there are dormant mines. Thus, the contention advanced has no merit. The other contention advanced that Central Government could not have vested land in favour of a State Government company is also without any foundation inasmuch as under Section 11 of CB Act, subject to fulfillment



of the conditions as enumerated therein, Central Government can vest land in a Government Company. Government Company, as defined under Section 2(b) of the CB Act, means a Government Company as defined in Section 617 of the Companies Act, 1956, in which any land or rights in or over land shall have vested under Section 11. There is no dispute that respondent No. 2 is a Government Company.

48. The mining plan is prepared on the basis of the co-ordinates of the Coal Block boundary and the entire area within the Block boundary is an integral part of the Coal Block and cannot be differentiated between coal bearing area and non-coal bearing area. Furthermore, it goes without saying, as submitted by Dr. Shukla, that land is also required for ancillary use of infrastructure and over burden (OB) dump area, etc. We are unable to accept the contention of the learned counsel for the petitioners that impugned land acquisition under CB Act is vitiated only for the reason that there is some non-coal bearing area within the Coal Block.

49. The decision in *Kedar Nath Yadav* (supra) popularly known as 'Singur case'/'Tata Nano case' was pressed into service to contend that if the manner of doing a particular act is prescribed under any statute the act must be done in that manner or not at all. The Hon'ble Supreme Court held that acquisition proceedings was perverse not because of the fact that land were needed for setting up an automobile industry which would help to generate employment as well as to promote socio-economic development in the State, but what makes acquisition proceedings perverse is that proper proceedings as laid down under Part VII of the Act of 1894 read with the Rules was not followed by the State Government. It was held that the acquisition of land was sought to be made out for public purpose at the



instance of a company in order to circumvent compliance with the mandatory provisions of Part VII of the Act of 1894. In that context, it was held that if that was permitted, then virtually every acquisition of land in favour of a company can be classified as one for the public purpose on the ground that setting up of industry would generate employment and would promote socio-economic development in the State, which certainly was not the intention of the legislature in providing the provisions of Part VII read with 3 (f) of the Act of 1894.

50. Total project affected families are approximately 1219 numbers. Compensation amount of Rs. 50,44,88,357/- has been paid in the meantime.

51. WPC No. 2541/2020, WPC No. 302/2022, 560/2022, 698/2022 and 1247/2022 were filed by 5, 27, 27, 40 and 57 petitioners. Petitioners in WPC No.2541/2020 had not raised any objection to the notifications. It is stated that some villagers had lodged objection that PESA Act of 1996 had not been followed and some other villagers had raised objection stating that Parsa Coal Block is located in a dense forest area. In WPC No. 302/2022, averment is made that most of the villagers of village Fattehpur filed objection on 03.10.2017. It is to be noted that none of the petitioners in WPC No. 302/2022 are from village Fattehpur. In WPC No. 560/2022, it is stated that most of the villagers of village Hariharpur, Salhi and Fattehpur had filed objection on 03.10.2017. The petitioners belong to villages of Hariharpur and Salhi. In WPC No. 698/2022, it is stated that most of the villagers of village Salhi, Tara (Charpara), and Fattehpur had filed objection on 03.10.2017 stating that notification was not clear as to whether it was issued for prospecting or mining. The petitioner Nos. 1 to 25



belong to village Salhi and petitioner Nos. 31 to 40 belong to village Fattehpur. In WPC No. 1247/2022, it is pleaded that most of the petitioners of village Fattehpur had filed objection on 03.10.2017. All the petitioners therein are residents of village Fattehpur. In all these petitions averments are made in paragraph 9.11 that Section 7(1) notice had not been served personally on the petitioners and submission is also advanced to that effect by the learned counsel for the petitioners. Apart from that, it is also pleaded and submitted by the learned counsel for the petitioners that Section 4 and Section 7 notifications under CB Act were not published in the Official Gazette and therefore, there was no due compliance of the mandate of the CB Act.

52. From the materials on record, it is seen that notification under Section 4(1) of the CB Act, dated 12.07.2017, was published in the Gazette of India on 13.07.2017. Notification under Section 7 dated 15.11.2017 was published in the Gazette of India on 18.11.2017. Amendment notification dated 27.12.2017 amending the notification dated 15.11.2017 was published in the Gazette of India on 27.12.2017. After consideration of the report of the Competent Authority submitted under Section 8 and after consulting the Government of Chhattisgarh, being satisfied, the Central Government issued notification under Section 9 on 13.06.2018 that land measuring 1252.447 hectares approximately or 3094.79 acres approximately and all of the rights in or over such land in the schedule appended thereto should be acquired and accordingly, the same was acquired. The notification dated 13.06.2018 was published in the Gazette of India on 14.06.2018. Thereafter, the Central Government, being satisfied that the respondent No. 2 is willing to comply with such terms and



conditions as the Central Government thinks fit to impose in that behalf, issued notification under Section 11 vesting all rights in and over the land so vested with the Central Government on the respondent No.2 subject to the terms and conditions indicated therein. The said notification was published in the weekly Gazette of India for the period July, 29 – August, 4, 2018. Therefore, the contention that Gazette Notifications were not published, is factually not correct. It is also seen that paper publications had been made, one in English and one in Hindi.

53. Under the provision of Section 24 of the CB Act read with Rule 3(2) of the Rules of 1957, only a notice or order, if directed against an individual, is required to be served by delivering or tendering a copy thereof duly signed to the person on whom it is to be served and there is no such requirement under Section 3(1) of the Rules of 1957 for service of any notice or order which is of general nature or affecting a number of persons. Sections 4(1) and 7(1) notifications had affected a large number of persons and therefore, the plea of the petitioners that Section 7(1) notification was not served personally is wholly misconceived.

54. Under Section 8 (1) of the CB Act, any person could object within 30 days of issue of the notification under Section 7(1). Though the Gazette notification under amended Section 7(1) was published on 27.12.2017, Competent Authority computed 30 days from the date of publication of the Gazette Notification in two newspapers on 16.01.2018 and accordingly, last date for lodging objection was fixed on 15.02.2018. No objection was received in that period, though, some objections came to be filed by some villagers on 26.02.2018, which was received on 06.03.2018. The villagers who had raised objection on 06.03.2018 pursuant to the notification issued



under Section 7(1) of the CB Act have not approached this Court, though more than four years have elapsed in the meantime. The fact that some villagers had lodged some objections to Section 4(1) and Section 7(1) notifications, though belatedly, also negates the claim of the petitioners that there was no Gazette publication of Section 4 (1) or Section 7(1) notification. In the circumstances of the case, there is no acceptable explanation for the delay in approaching this Court.

55. In view of the above discussion, we are of the considered opinion that apart from gross delay in approaching the Court, there being no merit in these petitions, the petitions deserve to be dismissed and accordingly, the same are dismissed. All interlocutory applications shall stand disposed of. No cost.

Sd/-

(Arup Kumar Goswami)
CHIEF JUSTICE

Sd/-

(Rajendra Chandra Singh Samant)
JUDGE