

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**SECOND APPEAL NO.742 OF 2011
ALONG WITH
CIVIL APPLICATION NO.1715 OF 2011
IN
SECOND APPEAL NO.742 OF 2011**

- | | | | |
|------|--------------------------------------|---|------------------------------------|
| 1. | Shri Namdev Sadashiv Adsul |) | |
| | (Deceased through his legal heir) |) | |
| 1-A. | Smt.Yashodabai Namdeo Adsul |) | |
| | Age : 62 years, Occu : Household |) | |
| 2. | Shri Anant Sadashiv Adsul |) | |
| | Age : 66 Years, Occu : Pensioner |) | |
| | R/O 1260, Ramdoha Ali, Wai |) | |
| | Tal. Wai, District : Satara |) | |
| 3. | Shri Vasant Sadashiv Adsul |) | |
| | Age : 65 Years, Occu : Agriculturist |) | |
| 4. | Shri Chandrakant Vasant Adsul |) | |
| | Age : 26 Years, Occu : Service |) | |
| 5. | Shri Vinod Namdev Adsul |) | |
| | Age : 24 years, Occ : Agriculturist |) | |
| 6. | Shri Rupesh @ Dhanesh Vasant Adsul |) | |
| | Age : 22 years, Occ : Agriculturist |) | |
| | Appellant Nos.1A and 2 to 6 all |) | |
| | residing at 1290, Raviwar Peth, |) | |
| | Wai, District Satara |) | .. Appellants
(Ori. Plaintiffs) |

Versus

1. State of Maharashtra)
Through the Collector, Satara)
2. The Sub Divisional Officer,)
Sub Division, Wai)
3. Maharashtra Industrial Development)
Corporation, Through its Principal)
Officer, M.I.D.C. Satara,)
Through Regional Manager,)
M.I.D.C. Satara.) .. Respondents
(Ori.Defendants)

Mr.R.A. Thorat, Senior Counsel with Mr.P.B. Gujar for the Appellants.
Ms.Shyamali Gadre with Mr.Ankit Kulkarni i/b Little & Co. for the Respondents.

CORAM : **R.D. DHANUKA, J.**
RESERVED ON : **18th October 2016**
PRONOUNCED ON : **29th November 2016**

Judgment :-

. By this appeal filed under section 100 of the Code of Civil Procedure, 1908, the appellants (original plaintiffs) have impugned the judgment and decree dated 2nd April 2011 passed by the Principal District Judge, Satara, dismissing Regular Civil Appeal No.165 of 2005 filed by the appellants. The appellants had impugned the judgment and decree dated 29th April 2005 passed by the learned Civil Judge, Senior Division, Satara, dismissing Regular Civil Suit No.171 of 1992 filed by the appellants inter-alia praying for declaration and injunction in respect of the suit properties bearing survey no.222 (old), 234 (new), admeasuring 2-H 27-R situated at Wai and the property bearing survey No.254/2-B (old), and the property bearing survey 8/2-B (new), admeasuring 1-H,

44-R situated at Shelarwadi. Some of the relevant facts for the purpose of deciding this second appeal are as under :-

2. The parties in this judgment are described as per their original status in the suit filed by the plaintiffs. The plaintiffs were the owners of the suit properties and were claiming to be in possession and cultivating the suit lands for a long period. It was the case of the plaintiffs that on the date of filing the suit, the plaintiff nos.1 to 3 and 6 were in actual possession of the suit lands.

3. Some time in the year 1985, the Sub Divisional Officer, Wai issued a notice under section 32(2) of the Maharashtra Industrial Development Act, 1961 (for short the said "MID Act") to the plaintiff nos.1 to 3 and their mother Rahibai in respect of the suit land no.1-B and in respect of the land 1-A. It was the case of the plaintiffs that the said Rahibai had replied to the said notice on 22nd April 1989 by addressing a letter to the Sub Divisional Officer, Mahabaleshwar Division, Wai, requesting not to initiate any proceedings of the alleged acquisition in respect of the suit properties behind the back of the plaintiffs and herself and also prayed for personal hearing and sought permission to lead evidence. It is the case of the plaintiffs that though the said notice was duly received by the Sub Divisional Officer, Mahabaleshwar Division, Wai, he did not give any reply to the said notice and also did not give any opportunity to the plaintiffs or the said Rahibai of hearing or for adducing any evidence.

4. It is the case of the plaintiffs that in the year 1990-91, the plaintiffs noticed that in the 7 x 12 extract in respect of the suit

properties, their names were bracketed and the name of the Maharashtra Industrial Development Corporation i.e. the defendant no.3 was entered into the ownership column. It was the case of the plaintiffs that neither any notice was served nor any opportunity of hearing was given to the plaintiffs before bracketing their names in the 7 x 12 extract. The plaintiffs challenged the said mutation entry by filing appropriate proceedings under the Maharashtra Land Revenue Code and the same are pending.

5. On 27th March, 1991, the plaintiffs filed a suit (Regular Civil suit No.179 of 1992) *inter-alia* praying for a declaration of their title and declaration that the proposed action of acquisition of the suit properties by the defendants was illegal, void, malafide and was not binding on the plaintiffs. The plaintiffs also prayed for consequential relief of permanent injunction against the defendants. The plaintiffs did not challenge the award passed by the Sub Divisional Officer in respect of the suit properties. On 31st March, 1991, during the pendency of the said suit filed by the plaintiffs, the Sub Divisional Officer made an award in respect of the suit properties.

6. The defendant nos.1 and 2 filed a written statement on 18th January, 1993 and denied the allegations made by the plaintiffs in the plaint. The defendant nos.1 and 2 admitted that the plaintiffs were in possession of the suit lands. On 21st February, 2004, the defendant no.3 i.e. MID filed a Purnis in the said suit and adopted the written statement filed by the defendant nos.1 and 2.

7. The learned trial Judge framed 7 issues. The plaintiffs examined three witnesses and led documentary evidence. None of the defendants examined any witnesses to lead oral evidence but relied upon documentary evidence placed on record. The witnesses examined by the plaintiffs were extensively cross-examined by the defendants.

8. By a judgment and decree dated 29th April, 2005, passed by the learned Civil Judge, Senior Division, Satara, the said suit (Regular Civil Suit No.171 of 1992) filed by the plaintiffs came to be dismissed. The learned trial Judge held that the plaintiffs had partly proved that they were in possession of the suit lands since many years and were enjoying the same as the owners. It is held that the plaintiffs had failed to prove that the acquisition proceedings started by the defendants were illegal. It is also held that the defendants had proved that the acquisition proceedings were completed as per the procedure. The learned trial Judge has held that the plaintiffs had not come to the Court with clean hands and had suppressed the material facts regarding notice received by them from the defendant no.2 in the year 1985. It is also held that all actions were taken by the defendants after following the procedure under the provisions of the said MID Act.

9. Being aggrieved by the said judgment and decree dated 29th April, 2005, passed by the learned trial Judge, the plaintiffs preferred an appeal (Regular Civil Appeal No.165 of 2005) in the Court of the learned Principal District Judge, Satara at Satara. The learned District Judge, Satara formulated 5 points for determination. He held that the suit was not maintainable as filed and the plaintiffs were not entitled for

declaration and injunction. Insofar as the issue as to whether the plaintiffs had proved that the acquisition proceedings started by the defendants were *void-ab-initio*, it is held by the learned District Judge that the said issue did not survive and if survived, then the same was answered in negative. The learned District Judge passed the judgment and decree on 2nd April, 2011 and dismissed the said Regular Civil Appeal No.165 of 2005.

10. Being aggrieved by the said judgment and decree dated 2nd April, 2011 passed by the learned Principal District Judge, Satara, the plaintiffs have preferred this second appeal under section 100 of the Code of Civil Procedure, 1908.

11. Mr.Thorat, learned senior counsel for the appellants invited my attention to some of the averments made in the plaint in Regular Civil Suit No.171 of 1992s filed by the plaintiffs and also the prayers therein. He submits that the plaintiffs had applied for a declaration that the plaintiffs continued to be the owners of the suit properties and for a declaration that the proposed action of acquisition by the defendants was illegal, void ab initio, malafide and was not binding on the plaintiffs. He also invited my attention to the written statement filed by the defendant nos.1 and 2. He invited my attention to section 32 of the said MID Act and also the finding of the first appellate Court wherein it is held that the provisions of the said MID Act are almost identical to the provisions of the Land Acquisition Act and would submit that the said finding is totally erroneous and contrary to the law laid down by the Supreme Court in case of ***Shri Ramtanu Co-Operative Housing Society Limited & Anr. vs.***

State of Maharashtra & Ors. 1970(3) SCC 323. Learned senior counsel placed reliance on paragraph 21 of the said judgment of ***Shri Ramtanu Co-Operative Housing Society Limited & Anr.*** (supra).

12. It is submitted by the learned senior counsel that though the plaintiffs had specifically prayed for personal hearing and for an opportunity to lead evidence before the Sub Divisional Officer, admittedly, neither any personal hearing nor any opportunity was rendered to the plaintiffs or their mother before completing the acquisition proceedings contrary to section 32 of the said MID Act. He submits that the defendant no.3 appears to have only submitted a report after receiving the request for hearing made by the plaintiffs for approval of the higher authority. He submits that none of the defendants have followed the principles of natural justice or mandatory procedure required to be followed before acquiring the property under the provisions of the said MID Act. He submits that the entire action on the part of the defendants was totally illegal and malafide. It is submitted that no oral evidence was led by any of the defendants admittedly.

13. Learned senior counsel for the plaintiffs submits that the finding of the first appellate Court itself is incorrect and is contrary to the judgment of the Supreme Court in case of ***State of Bihar vs. Dharendra Kumar & Ors. AIR 1995 SCC 1955*** which is adverted to by the first appellate Court in the said judgment and decree.

14. Learned senior counsel for the plaintiffs placed reliance on section 9 of the Code of Civil Procedure, 1908 and would submit that

since there is no express bar provided under the provisions of the said MID Act for filing the suit for challenging the acquisition proceedings, civil suit filed by the plaintiffs inter alia praying for a declaration that the acquisition proceedings were bad, illegal and void was maintainable under section 9 of the Code of Civil Procedure, 1908. In support of this submission, learned senior counsel placed reliance on paragraphs 13, 30 and 32 of the judgment delivered by 7 Judges of the Supreme Court in case of *M/s.Kamala Mills Limited vs. State of Bombay*, AIR 1965 SC 1942.

15. Learned senior counsel placed reliance on the judgment of the Supreme Court in case of *Dhruv Green Field Limited vs. Hukam Singh & Ors.*, (2002) 6 SCC 416 and more particularly on paragraphs 8 and 10 in support of his submission that since there was no implied or express bar from filing a suit under the provisions of the said MID Act, civil suit filed by the plaintiffs for declaration of the acquisition proceedings as nullity, void and illegal was maintainable. It is submitted that since the mandatory procedure of rendering a personal hearing to the plaintiffs and to their mother was not rendered by the defendants before completing the acquisition proceedings as contemplated under section 32(3) of the said MID Act, the acquisition proceedings and the entire action on the part of the defendants became nullity and void.

16. Learned senior counsel for the plaintiffs placed reliance on the judgment of this Court in case of *Qari Mohammed Zahir Hussain vs. Municipal Corporation*, 2002 (2) BCR 98 and would submit that even if the jurisdiction of the Civil Court is specifically excluded under

the provisions of the Act, civil suit is still maintainable and the Civil Court shall have jurisdiction to examine the issue, in case the provisions of the said MID Act had not been complied with or the authority had not acted in conformity with the fundamental procedure or if an offending action is malafide.

17. It is submitted by the learned senior counsel that before acquiring any land under the provisions of section 32(1) of the said MID Act, the State Government has to issue a show cause notice as to why the land should not be acquired. He submits that the State Government is under an obligation to give an opportunity of being heard after considering the cause shown by the owner or any other person interested in such property and only thereafter can pass such orders as the Government may deem fit. He submits that the opportunity of hearing is thus mandatory and is not an empty formality. He submits that under section 32(4) of the said MID Act, the property vests in the Government on publication of notice under section 32(1) of the MID Act, which is distinguished from the provisions of the Land Acquisition Act. He submits that under the provisions of the Land Acquisition Act, vesting of property in the Government takes place only on taking possession of the acquired land under section 16 of the Land Acquisition Act. It is submitted that the provisions of the said MID Act and the Land Acquisition Act are thus not identical and/or similar and thus the decision of the Supreme Court in case of ***State of Bihar vs. Dharendra Kumar & Ors. AIR 1995 SCC 1955*** was erroneously adverted and followed by the first appellate Court in the impugned judgment and decree.

18. Learned senior counsel placed reliance on the judgment of the Supreme Court in case of ***Shri Farid Ahmed Abdul Samad & Anr. vs. The Municipal Corporation of the City of Ahmedabad & Anr. (1976) 3 SCC 719*** and in particular paragraphs 10 and 24 and would submit that since no personal hearing was given to the plaintiffs by the defendant no.2 before acquiring the property of the plaintiffs, the acquisition proceedings were invalid, illegal and void. He submits that the decree and the order passed by the learned trial Judge as well as by the first appellate Court are thus *ex-facie* contrary to the principles of law laid down by the Supreme Court in case of ***Shri Farid Ahmed Abdul Samad & Anr.*** (supra).

19. Learned senior counsel for the plaintiffs placed reliance on the judgment of the Supreme Court in case of ***Hindustan Petroleum Corporation Limited vs. Darius Shapur Chenai & Ors. (2005) 7 SCC 627*** and more particularly paragraphs 6 and 9 and submits that the procedure of rendering a personal hearing must be effective and not a mere formality under the provisions of the said MID Act.

20. Learned counsel for the plaintiffs placed reliance on the judgment of this Court in case of ***Commissioner, Akola Municipal Corporation vs. Bhalchandra Govind Mahashabde, 2013(4) Mh.L.J. 45*** and more particularly paragraphs 3, 4 and 7 in support of his submission that since the acquisition proceedings initiated and concluded by the defendants were without complying with the mandatory procedure of personal hearing to the plaintiffs, the action complained by the plaintiffs being nullity, the jurisdiction of the Civil Court is not ousted. Learned

senior counsel also invited my attention to prayer clause (a) of the plaint and would submit that the plaintiffs have rightly prayed for such a declaration of the acquisition proceedings as illegal.

21. Learned counsel for the defendant no.3 (Maharashtra Industrial Development Corporation), on the other hand, placed reliance on Section 32(1) to 32(5) of the said MID Act and would submit that in view of Section 32(2) of the said MID Act, the property under acquisition vest in the State Government upon the State Government issuing a notice in the Official Gazette showing its intention to acquire the land by specifying a particular purpose for which such land is required. She submits that under Section 32(5) of the said MID Act, the State Government is empowered to demand possession of the land from the person who may be in possession of the land to surrender or deliver to the State Government or any person duly authorised by it in that behalf within thirty days of the service of the notice. She submits that it is not in dispute that the possession of the suit property was with the plaintiffs. She submits that on 16th November 1984, the State Government had issued a notification declaring the land in question as an Industrial land and since then, the suit land was deemed to be an Industrial land. Under Section 32(2) of the said MID Act, individual notices were issued to the plaintiffs.

22. Learned counsel for the defendant no.3 invited my attention to the findings recorded by the first appellate Court and would submit that no finding was rendered by the first appellate Court that no hearing was given by the defendant no.2 to the plaintiffs. She submits that the

plaintiffs have not even pleaded that no hearing was given to the plaintiffs by the defendant no.2 and thus the learned trial Judge as well as the first appellate Court rightly did not frame any issue as to whether any hearing was required to be given or was given or not to the plaintiffs.

23. Learned counsel for the defendant no.3 invited my attention to the issues framed by the learned trial Judge and also to paragraphs 10 and 11 of the impugned judgment and decree passed by the learned trial Judge and would submit that the parties had led evidence only regarding possession of the suit property and not regarding the procedure whether followed or not by the defendant no.2 before acquiring suit property under the provisions of the said MID Act. She submits that there was no dispute that the plaintiffs had received notices under Section 32(2) of the said MID Act from the defendant no.2. It is submitted that one of the witnesses examined by the plaintiffs i.e. PW-1 had in his cross-examination admitted that the notice under Section 32(2) of the said MID Act was received by them and it was to their knowledge that the State Government was going to acquire the suit property.

24. It is submitted that the said witness also admitted that against the said notice issued by the defendant no.2, the plaintiffs did not file any complaint or did not raise any objection in respect of the said notice before any Court. The plaintiffs did not file any suit or writ petition for challenging the Government Resolutions dated 19th November 1987 and 1st December 1988 regarding the acquisition of the suit lands. It is submitted that the award has already been made by the Sub-Divisional Officer, Wai as far back as on 31st March 1992 in respect

of the suit property under Section 33(2) and 36(1) of the said MID Act which has not been challenged separately by the plaintiffs till date. She submits that the remedy of the plaintiffs was to claim compensation under Section 33(3) read with 33(4) of the said MID Act followed by an appeal to Court against the decision of the Collector for determination of the Court. She submits that the suit filed by the plaintiffs challenging the validity of the acquisition was thus not maintainable and was without jurisdiction.

25. It is submitted by the learned counsel for the defendant no.3 that the defendant no.3 is the Special Planning Authority as per Section 40(1A) of the Maharashtra Regional and Town Planning Act, 1966 in respect of the areas notified under the MID Act and is a public body discharging public functions. It is submitted by the learned counsel that in this case, the notification under Sections 1(3) and 2(g) of the MID Act was issued by the State Government on 16th November 1984 applying Chapter VI of the MID Act to the suit lands along with other lands notified therein. The defendant no.2 had thereafter issued a notice under Section 32(2) of the MID Act inviting objection to the said acquisition and published such notice in the Official Gazette on 7th March 1985. The defendant no.2 had also issued individual notices to the land owners. The mother of the plaintiffs had received individual notice dated 5th January 1985. After considering the objection, if any, by the land owners, the State Government had issued notice under Section 32(1) of the MID Act and the lands mentioned therein vested in the State Government free from all encumbrances.

26. It is submitted that after issuing the said notices, the plaintiffs submitted their objections for the acquisition which was sent to the Regional Officer, MIDC, Pune. The Regional Officer submitted his report to the Chief Executive Officer after taking into consideration the objections of the plaintiffs and the other land owners. The final notification under Section 32(1) of the MID Act was issued and published in the Gazette on 1st December 1988. The award came to be passed on 31st March 1992 fixing the amount of compensation at Rs.23,400/- per hectare.

27. It is submitted that since the suit lands already vested with the Government and were suitable for industrial purposes and since the plaintiffs could not prove that the acquisition proceedings started by the defendants were illegal, the learned trial Judge rightly dismissed the suit filed by the plaintiffs. She submits that the first appellate Court also independently considered the oral and documentary evidence and rightly rejected the appeal filed by the plaintiffs.

28. It is submitted by the learned counsel for the defendant no.3 that when the notice under Section 32(1) of the MID Act was issued by the defendant no.2 on 1st December 1988 which provision was pari materia to Section 6 of the Land Acquisition Act, no objection of any nature was raised by the plaintiffs. The plaintiffs did not produce copy of their reply before the Special Land Acquisition Officer (SLAO) or before this Court or before the trial Court. It is submitted that so called objection was raised by the plaintiffs only after issuance of notice under Section 32(2) of the said MID Act. The plaintiffs did not follow the time stipulated for raising such objections and for demanding personal

hearing as stipulated under the provisions of the said MID Act. In this behalf, it is submitted by the learned counsel that a show cause notice was issued on 7th March 1985. The notification was issued on 4th November 1988. The plaintiffs had given a reply to the show cause notice only on 22nd April 1989. She submits that the acquisition proceedings had been completed only after following the mandatory procedure contained in the said MID Act and the notices under Section 32(5) of the said MID Act rightly came to be issued to the concerned parties for handing over possession to the Government.

29. In so far as the submission of the learned senior counsel for the plaintiffs that the defendant no.2 had not given any personal hearing or did not give any opportunity to lead evidence is concerned, the learned counsel for the defendant no.3 submits that it is an admitted fact that in the year 1985, the plaintiffs had received the notices under Section 32(2) of the said MID Act in respect of both the suit properties and were thus fully aware of the fact that the Government was going to acquire the lands for industrial purpose. The plaintiffs had admitted in the oral evidence that they had not challenged the acquisition proceedings in any Court of law or filed any writ petition against the State Government in this Court. The plaintiffs had also admitted that the acquisition proceedings were completed by the Government. It is submitted by the learned counsel for the defendant no.3 that since the plaintiffs demanded hearing much later, the plaintiffs had given up their alleged right of personal hearing from the defendant no.2 and could not have challenged the acquisition proceedings on that ground. It is submitted that the plaintiffs even did not make any application for enhancement of

compensation within one month from the date of award or even till date.

30. In support of her submission that the civil suit filed by the plaintiffs was not maintainable, the learned counsel for the defendant no.3 placed reliance on an unreported judgment of this Court in the case of ***Maharashtra Industrial Development Corporation, Mumbai Vs. Udhav Maruti Bhosale & Ors.*** delivered on 19th January 2006 in Second Appeal No.471 of 2004 and more particularly paragraphs 9,12, 15 to 22, 24 and 25 thereof. Relying upon the said judgment, it is submitted by the learned counsel that the acquisition procedure under the MID Act, 1961 is similar to the acquisition proceedings set out in the Land Acquisition Act, 1894.

31. Learned counsel invited my attention to paragraph 8 of the plaint filed by the plaintiffs and would submit that the plaintiffs in this case also had challenged the acquisition proceedings on the ground of mandatory procedure under the provisions of the MID Act which was not followed by the defendants. She submits that in the notice dated 5th January 1985 itself, the defendant no.2 had granted an opportunity to the plaintiffs to personally appear before the SLAO and raise grievances, if any, if they so desired before the concerned SLAO within a period of one month from the date of receipt of the notice. The plaintiffs, however, failed to avail of the said opportunity and thus could not have made any grievance of alleged violation of principles of natural justice.

32. Learned counsel for the defendant no.3 also placed reliance on the judgment of the Supreme Court in the case of ***Commissioner,***

Bangalore Development Authority Vs. K.S. Narayan, reported in **AIR 2006 SC 3379** and more particularly paragraphs 7, 8, 10 and 12 thereof in support of her submission that the suit filed by the plaintiffs inter alia challenging the validity of the acquisition proceedings was not maintainable. Learned counsel for the defendant no.3 also placed reliance on the judgment of the Supreme Court in the case of **Commissioner, Bangalore Development Authority Vs. Brijesh Reddy and Anr.**, reported in **(2013) 3 SCC 66** and in particular paragraphs 8, 13 and 14 thereof.

33. Learned counsel for the defendant no.3 placed reliance on the judgment of the Supreme Court in the case of **State of Bihar Vs. Dharendra Kumar (supra)** and in particular paragraph 2(A) thereof in support of her submission that since the said MID Act is a self-contained code, by necessary implication, the power of the civil Court to take cognizance of the case under Section 9 of the Code of Civil Procedure stands excluded, and the civil Court had no jurisdiction to go into the question of the validity or legality of the acquisition proceedings initiated and concluded by the defendants and would submit that the civil suit filed by the plaintiffs was not maintainable.

34. Learned counsel for the defendant no.3 distinguishes the judgment of the Supreme Court in the case of **Shri Farid Ahmed Abdul Samad & Anr. (supra)** relied upon by the plaintiffs on the ground that the facts before the Supreme court in the said judgment were factually different than in the present case. She submits that in the said matter, the appellants had lodged a written objection within the stipulated time and before completion of the acquisition proceedings had requested for a personal hearing with regard to their objection whereas, in this case,

though the notice under Section 32(2) of the MID Act was issued by the defendant no.2 on 5th January 1985 inviting objections and for hearing if they so desire within a period of one month from the date of receipt of the said notice, the plaintiffs neither gave any reply nor requested for personal hearing within the stipulated time of thirty days.

35. In so far as the judgment of this Court in the case of ***Commissioner, Akola Municipal Corporation Vs. Bhalchandra Govind Mahashabde (supra)*** relied upon by the plaintiffs is concerned, the learned counsel for the defendant no.3 distinguishes the said judgment on the ground that the facts and circumstances in the said judgment before this Court were totally different. She submits that in the said matter, the plaintiffs had challenged the show cause notice dated 3rd October 2012 issued under Section 260 of the Maharashtra Municipal Corporation Act on the ground that no opportunity of being heard was provided by the Municipal Corporation to the plaintiffs whereas, in this case, the plaintiffs had challenged the complete acquisition proceedings itself and the challenge was not on limited ground.

36. It is submitted that in this case, admittedly the notice dated 5th January 1985 specifically provided an opportunity to the plaintiffs to appear personally before the SLAO and to raise grievances, if any, which the plaintiffs had failed to avail of such opportunity granted by the defendants. She submits that the averments made by the plaintiffs in the plaint that the plaintiffs were not given an opportunity of being heard was futile and illusory. The plaintiffs had also failed to disclose in the plaint that due procedure was allegedly not followed by the acquiring

authority in acquiring the land or the acquiring authority had acted in a malafide or high handed manner.

37. In so far as the judgment of the Supreme Court in the case of ***Dhruv Green Field Limited Vs. Hukam Singh & Ors. (supra)*** relied upon by the plaintiffs is concerned, learned counsel for the defendant no.3 distinguishes the said judgment on the ground that the facts in the said judgment were totally different than the facts and circumstances of the present case. She submits that the provisions of the said MID Act itself is a complete code due to which the jurisdiction of the civil Court to take cognizance of the cases arising under the said Act is impliedly barred. She submits that only remedy of the plaintiffs was to approach the constitutional Courts under their plenary power under Articles 226 and 32 of the Constitution of India respectively or to claim compensation under the provisions of the MID Act.

38. In so far as the judgment of the Supreme Court in the case of ***Hindustan Petroleum Corporation Limited Vs. Darius Shapur Chennai & Ors. (supra)*** relied upon by the plaintiffs is concerned, the learned counsel for the defendant no.3 distinguishes the said judgment on the ground that the facts and circumstances before the Supreme Court in the said judgment are totally different than the facts and circumstances in this case. She submits that in that matter, the respondent had filed a detailed objection and was also personally heard as required under Section 5(A) of the Land Acquisition Act, 1894 before issuance of the notification under Section 6 of the Land Acquisition Act, 1894. She submits that however in this case, the plaintiffs failed to submit their

objections within the stipulated time and failed to avail of the personal hearing offered by the defendant no.2 and had belatedly submitted their objections for the first time on 22nd April 1989 which was much after issuance of the notification under Section 32(1) of the MID Act. The suit filed inter alia praying for declaration that the acquisition proceedings were bad and illegal was not maintainable at all. She submits that the judgment of the Supreme Court in the case of ***Hindustan Petroleum Corporation Limited (supra)*** thus does not apply to the facts of this case.

39. In so far as the judgment of the Supreme Court in the case of ***Kamala Mill Ltd. Vs. State of Bombay (supra)*** relied upon by the plaintiffs is concerned, the learned counsel for the defendant no.3 distinguishes the said judgment on the ground that in the said judgment, Supreme Court in paragraphs 13 and 32 has observed that where exclusion of jurisdiction is a matter of necessary implication, the adequacy or sufficiency of an alternative remedy is very important to determine whether jurisdiction of a Civil Court is barred. She submits that though in this case, there is no specific provision under the said MID Act excluding jurisdiction of the Civil Court, in such matters of acquisition of land, by implementation and by applying analogy of the Land Acquisition Act, it has to be said that powers of Civil Court to take cognizance of the case under Section 9 of the Code of Civil Procedure stood excluded and the Civil Court had no jurisdiction to go into the question of validity or legality of the notification issued under Sections 31, 32(1), 32(2) and the other provisions of the said MID Act.

40. It is submitted that in number of judgments already relied upon by her which are referred to aforesaid, it has been held by the

Supreme Court that the Civil Court had no jurisdiction to go into the question of validity or legality of the acquisition proceedings under the Land Acquisition Act, 1894 and aggrieved person has a right available to approach the High Court under Article 226 and the Supreme Court under Article 32 with self imposed restrictions on their exercise of extraordinary power.

41. In so far as the judgment of the Supreme Court in the case of of ***Shri Ramtanu Cooperative Housing Society Ltd. & Anr. Vs. State of Maharashtra & Ors. (surpra)*** relied upon by the plaintiffs is concerned, learned counsel for the defendant no.3 submits that Supreme Court in the said judgment has held that there is no procedural discrimination between the MID Act, 1961 and the Land Acquisition Act, 1894. The two Acts are dissimilar in situations and circumstances. She submits that Supreme Court had clearly held that difference enunciated in these two Acts only pertains to purpose and object of both the Acts and does not refer to the procedure to be followed while acquiring a land under the respective Acts.

42. Mr.Thorat, learned senior counsel for the plaintiffs in rejoinder heavily placed reliance on Section 9 of the Code of Civil Procedure, 1908 and would submit that the civil suit is maintainable unless the suit is expressly or by implication barred. He submits that admittedly under the provisions of the said MID Act filing of the civil suit for challenging the acquisition proceedings is not barred. Learned counsel for the plaintiffs invited my attention to paragraphs 5, 8 and 10 of the written arguments filed by the defendant no.3 before the

learned trial Judge and would submit that it was not the case of the defendant no.3 that the procedure under Section 32 had been followed by the defendants. He submits that admittedly in this case, the plaintiffs had already filed a suit much before the award was declared by the SLAO.

43. Learned senior counsel for the plaintiffs distinguishes the judgment of this court in the case of ***Maharashtra Industrial Development Corporation, Mumbai (supra)*** relied upon by the defendant no.3 on the ground that in that matter, the plaintiffs had applied for a declaration that the award was illegal and void and had applied for permanent injunction. The MIDC had not taken possession of the suit property in that matter. However in this case, it is an admitted position that the plaintiffs are in possession of the suit property and had not challenged the award made by the SLAO. He submits that the judgment of the Supreme Court in the case of ***Shri Ramtanu Cooperative Housing Society Ltd. & Anr. (supra)*** holding that both the Acts are dissimilar in nature was not brought to the notice of the learned Single Judge of this Court in the case of ***Maharashtra Industrial Development Corporation, Mumbai (supra)*** relied upon by the defendant no.3.

44. In so far as the judgment of the Supreme Court in the case of ***Commissioner, Bangalore Development Authority Vs. Brijesh Reddy and Anr. (supra)*** relied upon by the defendant no.3 is concerned, learned senior counsel for the plaintiffs distinguishes the said judgment on the ground that in that matter, the plaintiffs had filed a suit inter alia praying only for a permanent injunction restraining the Bangalore Development

Authority from interfering with peaceful possession of the plaintiffs from the scheduled property whereas in the present case, the plaintiffs had applied for declaration of a title and for a declaration that proposed action for acquisition was illegal, void ab initio, malafide and was not binding on the plaintiffs. He submits that the said judgment of the Supreme Court in the case of ***Commissioner, Bangalore Development Authority Vs. Brijesh Reddy and Anr. (supra)*** would not assist the case of the defendant no.3. It is submitted that the suit filed by the plaintiffs was thus maintainable in view of there being no express bar provided in the MID Act. He submits that both the Courts totally overlooked the provisions of Section 32 (3) which was mandatory and not an empty formality.

45. It is submitted by the learned senior counsel that the defendant no.3 had failed to prove that the acquisition proceedings were completed as per the procedure prescribed under the provisions of the said MID Act. The defendant no.3 had only filed pursis thereby adopting written statement filed by the defendant nos.1 and 2. None of the defendants led any oral evidence before the learned trial Judge.

REASONS AND CONCLUSIONS:-

46. Learned senior counsel for the plaintiffs has addressed this Court on the issue as to whether civil suit filed by the plaintiffs inter alia praying for a declaration that the plaintiffs continued to be ordered of the suit properties and that the proposed action of the defendants of acquisition was illegal, void ab initio, malafide and was not binding on the plaintiffs was maintainable in view of Section 9 of the Code of Civil

Procedure, 1908 or not. Learned counsel for the defendant no.3, on the other hand, addressed this Court on the issue of maintainability of the said civil suit filed by the plaintiffs and also on merits.

47. By consent of parties, this Court heard the matter finally at the admission stage at the great length. I shall decide the issue “whether the civil suit filed by the plaintiffs inter alia praying for a declaration of title and that proposed action of acquisition of the suit properties was illegal, void, malafide and was not binding on the plaintiffs was maintainable in view of Section 9 of the Code of Civil Procedure, 1908 read with the provisions of the Maharashtra Industrial Development Act, 1961 or not.”

48. There is no dispute that in the plaint filed by the plaintiffs, it was alleged by the plaintiffs that though the notice issued under Section 32(2) of the said MID Act was replied by the mother of the plaintiffs on 22nd April 1989 requesting the authority not to initiate any illegal proceedings of alleged acquisition behind the back of the plaintiffs and their mother and seeking personal hearing and permission to lead evidence, the defendants did not give any opportunity to the plaintiffs and the said Rahibai, mother of the plaintiffs nor the plaintiffs were permitted to adduce any evidence. The plaintiffs also alleged that in the area situated nearer to Wai which is quite near the suit lands, large quantity of barren lands were available for the purpose of Industrial area. It was alleged that the acquisition proceedings were initiated arbitrarily and without any logic and at the instance of some influential persons. It was alleged that the action of the defendants in acquiring the

suit property was illegal, void ab initio, arbitrary, malafide and ultra vires in law and was not binding upon the plaintiffs. It was alleged that the mandatory procedure as prescribed under the said MID Act had not been followed and therefore, the action of entering the name of the State of Maharashtra in the village record was illegal, void ab initio and time barred. The plaintiffs also applied for permanent injunction against the defendants from interfering with the possession of the plaintiffs of the suit property.

49. The defendant nos.1 and 2 filed a written statement on 18th January 1993 resisting the suit filed by the plaintiffs on the ground of maintainability of the said suit and also on merits. In so far as the defendant no.3 is concerned, they filed a pursis thereby adopting written statement filed by the defendant nos.1 and 2.

50. Learned trial Judge framed seven issues for determination including the issue as to whether the plaintiffs had proved that the acquisition proceedings started by the defendants was illegal or not and as to whether the defendants had proved that the acquisition proceedings were completed as per the procedure. The learned trial Judge held that the plaintiffs had partly proved that they were in possession of the suit lands since many years and were enjoying the same as owners. It is held that that the plaintiffs had failed to prove that the acquisition proceedings started by the defendants were illegal. It is held that the defendants had proved that the acquisition proceedings were completed as per the procedure and thus the plaintiffs were not entitled for declaration and for injunction as prayed.

51. In so far as the contention of the plaintiffs that the defendants had not given any opportunity to the plaintiffs of hearing and whether the acquisition proceedings were arbitrary and initiated with malafide intention or not, the learned trial Judge has dealt with this contention in paragraphs 10 to 16 of the impugned judgment and decree. It is held by the learned trial Judge that Mr. Bhiku Dagade (PW-2) was examined by the plaintiffs. He was acquainted with the suit property and the plaintiffs were in possession of the suit property since long time. The said witness was examined only for the purpose of proving the possession of the plaintiffs in the suit property and therefore, testimony of the said witness was not at all helpful in the present matter. The third witness Mr. Pralhad Gore also deposed that he had also testified regarding the possession and cultivation of the suit property. Learned counsel for the plaintiffs had orally consented to exhibit and admitted at Exhibits 66 to 69 relied upon by the defendants.

52. The learned trial Judge considered the oral evidence led by the witness (PW-1) who admitted that in the year 1985 when they received notice under Section 32(2) of the MID Act, it had come to their knowledge that the State Government was going to acquire the suit lands. He also admitted that they had not filed any complaint against the said notice and had not even objected before any Court. The plaintiffs did not file any suit or writ petition for challenging the Government Resolutions dated 19th November 1987 and 1st December 1988 regarding the acquisition of the suit lands and the other lands from taluka Wai.

53. The learned trial Judge after construing the provisions of Section 32 of the said MID Act held that when the notice under Sub-

Section (1) of Section 32 of the said MID Act is published in the Official Gazette, the land shall, on and from the date of such publication, vest absolutely in the State Government free from all encumbrances. Under Section 32(5) of the said MID Act, the Government may issue notice in writing to the person who may be in possession of the land to surrender or deliver possession to the State Government or any person duly authorised by the Government within thirty days of the service of the notice. The learned trial Judge held that third witness examined by the plaintiffs had admitted that the Government had completed the procedure of acquisition. It was crystal clear that the Government had published the notices as per the provisions of Sections 32(1) and 32(2) of the said MID Act.

54. The plaintiffs had admitted that Rahibai had received a notice in the year 1985. However, no satisfactory explanation was given by the plaintiffs as to why for almost four years, the said Rahibai or the present plaintiffs had kept mum and did not submit their objections within the prescribed time laid down in the notice by the Government. It is held that the plaintiffs has not come to the Court with clean hands and suppressed material fact regarding the notice which they had received in the year 1985. No logical explanation was given by the plaintiffs as to why they filed their objections after lapse of four years from the date of receipt of the notice under Section 32(1) of the said MID Act. The notices were issued on 6th November 1984, 7th March 1985, 19th November 1987 and 1st December 1988. The learned trial Judge accordingly held that all the action were taken as per the procedure prior to raising objections by the plaintiffs in the year 1989 and thus the suit property vest in the Government. The learned trial

Judge accordingly rendered a finding that the plaintiffs had failed to prove that the act of the defendant no.2 in acquiring the suit lands was arbitrary, beyond the legal powers or was malafide and accordingly dismissed the suit.

55. A perusal of the judgment and decree passed by the learned Principal District Judge, Satara indicates that the learned Principal District Judge formulated five points for determination including the point whether the suit as framed was maintainable or not.

56. The learned Principal District Judge also adverted to the oral evidence led by the plaintiffs in which the first witness examined by the plaintiffs had admitted that in the year 1985, his mother had received a notice under Section 32 of the said MID Act and that she was aware that the suit land was going to be acquired for industrial purpose and the plaintiffs or their mother had not challenged the notification under Section 32(2) of the said MID Act. The second witness examined by the plaintiffs admitted that the acquisition of the land was already completed.

57. On the issue as to whether the suit was maintainable or not, the learned Principal District Judge after going through the provisions of the said MID Act held that the provisions of the said MID Act were almost identical with the provisions of the Land Acquisition Act, 1894. The learned Principal District Judge adverted to the judgment of the Supreme Court in the case of *State of Bihar Vs. Dhirendra Kumar (supra)* held that the civil suit itself was not maintainable and the Civil Court cannot decide the validity of the suit land under the provisions of the said MID Act. It is held that the point regarding validity of the

acquisition of the suit land thus did not survive. It is further held that if that point survived, the same was answered in negative. It is also held that the suit for declaration and injunction based on the validity of the acquisition proceedings of the suit land is not maintainable and deserves to be dismissed. It is held that the plaintiffs were not entitled to declaration or injunction against the defendants. The learned Principal District Judge accordingly dismissed the said appeal.

58. I shall now deal with the judgments relied upon by the learned counsel appearing for both the parties on the issue as to whether the civil suit (Regular Civil Suit No.171 of 1992) for declaration that the plaintiffs continued to be the owners of the suit properties and the defendants' proposed action for acquisition was illegal, void ab initio, malafide and is not binding on the plaintiffs was maintainable or not. In an unreported judgment of this court delivered on 19th January, 2006 in case of ***Maharashtra Industrial Development Corporation, Mumbai Vs. Udhav Maruti Bhosale & Ors.*** in Second Appeal No.471 of 2004, this court has considered a situation where the lands in question in that matter were to be acquired by the Industrial Development under the said provisions of MID Act. It was the case of the plaintiffs in that matter that the State Government had issued notification under section 32(1) of the said MID Act prior to the issuance of the notice under section 32(1) of the MID Act and as such there was breach of the provisions of the said MID Act.

59. It was also the case of the plaintiffs therein that without giving opportunity to place their grievances personally before the

concerned authority, the Government of Maharashtra took further steps without giving any notice regarding handing over possession or for fixation of compensation. The plaintiffs who claimed to be the owners of the land in question accordingly filed a suit for a declaration that the award passed in land acquisition proceedings were illegal and void, initio and also prayed for injunction against MIDC for taking suit lands. MIDC in that matter urged before this court that having regard to the provisions of the said MID Act, the Civil Court has in fact no jurisdiction to go into the question as to whether proper procedure under the said Act was followed or not and the suit filed by the plaintiffs was in fact not maintainable. In that matter the issue of jurisdiction was not raised by the MIDC before the trial court as well as before first appellate court and was raised for the first time in the second appeal. This court permitted the MIDC to raise issue of maintainability of suit before this court raised for the first time.

60. This court after adverting to the judgment of Supreme Court in case of *State of Bihar vs. Dharendra Kumar & Ors.* (supra) and in case of *Laxmi Chand and others V Gram Panchayat, Kararia and Ors.*, reported in *AIR 1996 SC 523* held that though in the said two judgments, the Supreme Court was considering the provisions of Land Acquisition Act and not MID Act, if the relevant provisions with regard to the acquisition land under both the Acts were considered, the same were absolutely similar. This court considered section 34 of the MID Act and held that under the said provision, it was clearly mentioned that the procedure laid down in the Land Acquisition Act was to be followed. This court accordingly held that though there is no specific provision

excluding jurisdiction of civil court by implementation and by applying analogy of the Land Acquisition Act it has to be said that powers of Civil Court to take cognizance of the case under Section 9 of Code of Civil Procedure stand excluded and the Civil Court has no jurisdiction to go into the question of the validity or legality of the Notification issued under Section 31, 32(1), 32(2) and other Sections in Chapter VI of MID Act.

61. This court also considered the fact that the plaintiffs in that matter had challenged the award on the ground that the proper procedure was not followed for acquisition of the suit lands. This court accordingly held that such suit was not maintainable in the civil court. This court in the said judgment after holding that the suit was in fact was not maintainable in the civil court also proceeded to decide the issue of merits whether the findings rendered by the first appellate court was correct or not and held that there was no breach of provisions of section 32(1) or section 32(2) of the MID Act. Insofar as issue of violation of principles of natural justice i.e. personal hearing not having been given under section 32(2) of the MID Act is concerned, this court rendered a finding that an opportunity was provided to the plaintiffs to have personal hearing and it was left to them to appear at any date in working hours by giving an appointment.

62. This court also adverted to the judgment of this court in case of *Madhav Ramchadnra Nanivadekar and Anr. V/s Special Land Acquisition Officer NO.2 and Ors.*, reported in *1998(4) Bom.C.R. 171*, wherein the Division Bench of this court had observed that when there

was no demand for personal hearing by the land holder, it can be held that enquiry under Section 5A of Land Acquisition Act was initiated as a result for failure of giving personal hearing to the Petitioners. This court accordingly rejected the contention of the plaintiffs that the defendants had not given any opportunity for personal hearing to the plaintiffs.

63. A perusal of the judgment and decree passed by the first appellate court clearly indicates that the first appellate court had considered the oral evidence led by the plaintiffs and held that the mother of the plaintiff had received notice under section 32 of the MID Act and was aware that the suit land was going to be acquired for industrial purpose and the plaintiffs had not challenged the notification issued under section 32(2) of the MID Act. The witness of the plaintiff also admitted that the acquisition of the suit land was already completed. The first appellate court after considering the notices, notification issued by the State Government and reply given by the plaintiffs has rendered a finding of fact that the State Government had complied with all the necessary requirements of MIDC Act before acquisition of the disputed land.

64. A perusal of the record indicates that in the notice issued under section 32(2) of the MID Act by the defendant no.2 in the year 1985 itself, the defendant no.2 had offered personal hearing to the mother of the plaintiffs. The mother of the plaintiffs however addressed a letter on 22nd April, 1989 belatedly raising objections in respect of the acquisition of the suit property. The plaintiffs did not desire any personal hearing in response to the said notice within time contemplated therein and submitted reply after more than three years from the date of the receipt of the said notice.

65. Insofar as reliance in case of ***Shri Ramtanu Co-Operative Housing Society Limited & Anr.*** (supra) relied upon by the learned senior counsel for the plaintiffs in support of his submission that the findings of the first appellate court that the provisions of MID Act are almost identical with the Land Acquisition Act is contrary to the judgment of Supreme Court in case of ***Shri Ramtanu Co-Operative Housing Society Limited & Anr.*** (supra) is concerned, the Supreme Court had considered constitutional validity of the said MID Act in the said judgment. Supreme Court held that the MID Act is special one having the specific and special purpose of growth, development and organization of industries in the State of Maharashtra. The Act has its own procedure and there is no provision in the Act for acquisition of land for a company as in the case of Land Acquisition Act.

66. It is held that the policy underlying the Act is not acquisition of land for any company but for the one and only purpose of development, organization and growth of industrial estates and industrial areas. The Land Acquisition Act is a general Act and that is why there is specific provision for acquisition of land by the State for public purpose and acquisition of land by the State for companies. In this background, Supreme Court held that under the Land Acquisition Act, acquisition is at the instance of and for the benefit of a company whereas under the MID Act, acquisition is solely by the State for public purposes. The two acts are dissimilar in situations and circumstances. In my view learned counsel for the defendant no.3 is thus right in her submission that the difference found by the Supreme Court in the provisions of MID Act and Land Acquisition Act was only in respect of the purpose and objects of

both the Acts and not the procedural as canvassed by the learned senior counsel for the plaintiffs. In my view the reliance placed by the learned senior counsel on the judgment of Supreme Court in case of ***Shri Ramtanu Co-Operative Housing Society Limited & Anr.*** (supra) thus is misplaced and the said judgment would not assist the case of the plaintiffs.

67. In my view, there is thus no infirmity in the view taken by the first appellate court that the provisions of MID Act and the Land Acquisition Act insofar as procedure described therein are concerned are almost identical.

68. Supreme Court in case of ***Commissioner, Bangalore Development Authority Vs. K.S. Narayan*** (supra) while considering the provisions of section 4(1) and (6) of the Land Acquisition Act, 1894 and after adverting to the judgment of Supreme Court in case of ***State of Bihar vs. Dhirendra Kumar & Ors.*** (supra) held that civil suit challenging the acquisition proceedings was not maintainable. The only remedy to examine such issue could be in a writ petition filed under Article 226 of the Constitution of India before the High Court and not by the Civil Court. In my view the principles of law laid down by the Supreme Court in case of Commissioner, Bangalore Development Authority squarely applies to the facts of this case. In this case also the plaintiffs had challenged acquisition proceedings on the ground that the mandatory procedure prescribed therein was allegedly not followed by the defendants.

69. **hority Vs. Brijesh Reddy and Anr.**(supra) has considered the proceedings arising out of the suit filed for permanent injunction against the defendants from interfering with the peaceful possession and enjoyment with the acquired property. Supreme Court held that the Land Acquisition Act is a complete Code in itself and is meant to serve public purpose. By necessary implication, the power of civil Court to take cognizance of the case under Section 9 of Code of Civil Procedure, 1908 stands excluded and the Civil Court had no jurisdiction to go into the question of the validity or legality of the notification issued under section 4, declaration under section 6 of the Land Acquisition Act and subsequent proceedings except by the High court in a proceeding under Article 226 of the Constitution of India were not maintainable. Though the acquisition proceeding itself was not challenged by the plaintiffs, Supreme Court held that suit of any nature with regard to acquisition proceedings including the suit for bare injunction is not maintainable before the civil court.

70. In my view since the procedure of acquisition under the Land Acquisition Act and MIDC Act are almost identical, principles of law laid down by the Supreme Court in case of aforesaid two judgments would squarely apply to the facts of this case. I am respectfully bound by the said judgment.

71. Supreme Court in case of **State of Bihar vs. Dharendra Kumar & Ors.** (supra) while dealing with the question whether validity or legality of the acquisition procedure under the Land Acquisition Act, 1989 could be questioned in civil suit or not, the Supreme Court

considered section 9 of the Code of Civil Procedure, 1908 also and has held that the Land Acquisition Act being a complete Code in itself and is meant to serve public purpose and by necessary implication the power of the civil court to take cognizance of the case under Section 9 of the Code of Civil Procedure stands excluded, and a civil court has no jurisdiction to go into the question of the validity or legality of the notification under Section 4 and declaration under Section 6. It is held that the civil suit itself was not maintainable.

72. In my view the whole purpose and object of MID Act of acquisition of the land by the State being for public purposes, the challenge to the acquisition for such public purpose, by necessary implication is excluded under section 9 of the Code of Civil Procedure and civil court thus has no jurisdiction to entertain any such suit. The principles laid down by the Supreme Court in case of ***State of Bihar vs. Dharendra Kumar & Ors.*** (supra) squarely applies to the facts of this case. I am respectfully bound by the said judgment.

73. Insofar as judgment of Supreme Court in case of ***Shri Farid Ahmed Abdul Samad & Anr.*** (supra) relied upon by the learned senior counsel for the plaintiffs is concerned, Supreme Court had while considering section 5A of the Land Acquisition Act had in the facts of that case had held that it was not the case of the failure of the natural justice as such but was a case of absolute non compliance with the mandatory provisions under section 5A of the Land Acquisition Act. In paragraph (10) of the said judgment, Supreme Court held that section 5A of the Land Acquisition Act does not rest on the person's demand for

personal hearing. The matter may be different if a person whose property is acquired abandons the right to a personal hearing, which aspect the Supreme Court did not consider in that appeal. In the facts of this case admittedly, the defendant no.2 had offered personal hearing and opportunity to the plaintiffs in the year 1985 whereas the plaintiffs had requested for personal hearing in the year 1989 and did not avail of the opportunity of the hearing when offered by the defendant no.2. It was thus a clear case of abandonment of right of the personal hearing of the plaintiffs or their mother. The judgment of Supreme Court in case of ***Shri Farid Ahmed Abdul Samad and another*** (supra) thus would not assist the case of the plaintiffs but would assist the case of the defendants.

74. Insofar as judgment of this court in case of ***Commissioner, Akola Municipal Corporation*** (supra) relied upon by the learned senior counsel for the plaintiffs is concerned, a perusal of the said judgment indicates that the validity of a notice under section 260 of the Maharashtra Municipal Corporation Act was challenged. This court after considering section 433A of the said Maharashtra Municipal Corporations Act, held that the suit challenging the notice could be challenged in a suit on the limited grounds viz. that the act of issuance of such notice is nullity, or that while issuing such notice, the mandatory provisions of the said Act had not been complied with, or that the authority issuing such notice has not acted in conformity with the fundamental judicial procedure, or that it was an abuse of exercise of power, or that the offending act had not been done in good faith. However, in the facts of this case, the plaintiffs did not file any objection or opt for personal hearing and did not appear before the Special Land Acquisition Office

though an opportunity was given in the notice issued on 5th January, 1985 for four years. The facts before this court in case of **Commissioner, Akola Municipal Corporation** (supra) are totally different and are clearly distinguishable in the facts of this case.

75. Insofar as judgment of this court in case of **Dhruv Green Field Ltd.** (supra) relied upon by the learned senior counsel for the plaintiffs is concerned, Supreme Court has laid down three principles of law to be considered to find out whether a civil suit is maintainable or not in spite of the express provision in any special Act barring the jurisdiction of a civil court to deal with the matters specified thereunder. There is no dispute about the proposition laid down by the Supreme Court in the said judgment. Since this court is of the view that the MID Act is a complete code in itself, the jurisdiction of civil court to take cognizance of the case arising under the said Act are impliedly barred. Under the provisions of the said MID Act, an appeal is provided to the court under section 34 against the decision of the Collector determining the amount of compensation under section 35 of the MID Act, if any dispute arises as to the apportionment of the compensation or any part thereof, or as to the persons to whom the same or any part thereof is payable, the Collector may refer such dispute for the decision of the Court. It is thus clear that the said MID Act is a complete code by itself. A perusal of the plaint filed by the plaintiffs in this case clearly indicates that it was not the case of the plaintiffs that action of defendants in acquiring the suit property was nullity. The judgment of Supreme Court in case of **Dhruv Green Field Ltd.** (supra) thus does not assist the case of the plaintiffs.

76. Insofar as judgment of Supreme Court in case of ***Hindustan Petroleum Corporation Limited*** (supra) relied upon by the learned senior counsel for the plaintiffs is concerned, a perusal of the said judgment indicates that the owner of the land who had received notice under section 5A of the Land Acquisition Act had filed a detailed objection and was also personally heard by the land acquisition officer. In this case the mother of the plaintiffs filed her objection for the first time only on 22nd April, 1989 i.e. much after issuance of the notification under section 32(1) of the MID Act which was issued on 1st December, 1985. The fact before the Supreme Court in case of ***Hindustan Petroleum Corporation Limited*** (supra) are totally different and are clearly distinguishable in the facts of this case. The said judgment of Supreme Court in case of ***Hindustan Petroleum Corporation Limited*** (supra) would not assist the case of the plaintiffs.

77. Insofar as judgment of Supreme Court in case of ***Kamala Mill Ltd.*** (supra) relied upon by the learned senior counsel for the plaintiffs is concerned, a perusal of the paragraph 32 of the said judgment indicates that it is observed by the Supreme Court that where the exclusion of the civil courts' jurisdiction is expressly provided for, the consideration as to the scheme of the statute in question and the adequacy or the sufficiency of the remedies provided for by it may be relevant but cannot be decisive. But where exclusion is pleaded as a matter of necessary implication, such considerations would be very important and in conceivable circumstances, might even become decisive. In catena of decisions referred to aforesaid, Supreme Court has held that the jurisdiction of the civil court is excluded for determination the validity of

the acquisition proceedings and remedy of such party to approach the High Court would be under Article 226 of the Constitution of India which is effective alternate remedy. In my view, the judgment of Supreme Court in case of ***Kamala Mill Ltd.*** (supra) relied upon by the Supreme Court by the plaintiffs thus would not assist the case of the plaintiffs.

78. In my view the suit filed by the plaintiffs inter alia praying for a declaration that the plaintiffs continued to be the owners of the suit property and that the defendants proposed action of acquisition is illegal, void initio and is not binding on the plaintiffs was thus not maintainable and was rightly dismissed as not maintainable by the first appellate court in the judgment and decree dated 2nd April, 2011 and does not warrant any interference. Appeal is devoid of merits.

79. In my view, since the first appellate court has rightly held that the suit filed by the plaintiffs was not maintainable in view of the implied bar under the provisions of said MID Act, the first appellate court could not have rejected the plaint on merits. The findings and conclusions drawn by the first appellate court that the plaintiffs had failed to prove the acquisition proceedings started by the defendants was void and initio, thus deserves to be set aside.

80. I therefore pass the following order :-

- (a) The findings and conclusions drawn by the Principal District Judge, Satara in Regular Civil Appeal No.165 of 2005 that the plaintiffs had failed to prove that acquisition proceeding started by the defendants was void ab initio is set aside.

- (b) The findings rendered by the first appellate court that Regular Civil Suit No.171 of 1992 filed by the plaintiffs is not maintainable is upheld.
- (c) Second appeal is disposed of in the aforesaid terms.
- (d) In view of the disposal of the second appeal, Civil Application No.1715 of 2011 filed by the plaintiffs does not survive and is accordingly disposed of.
- (e) There shall be no order as to costs.

R.D. DHANUKA, J.

Learned counsel appearing for the appellants seeks continuation of the ad-interim order granted by this court for a period of eight weeks from today. Learned counsel appearing for the respondent no.3 vehemently opposes continuation of the ad-interim stay.

Since the appellants are admittedly in possession of the suit property and the suit of the appellants is rejected on the ground of maintainability, I am inclined to accept the request of the learned counsel for the appellants for continuation of the ad-interim order for a period of eight weeks from today. It is ordered accordingly. It is made clear that during this period of eight weeks, the appellants shall not create any third party rights in respect of the suit property. If any Special Leave Petition is filed by the appellants, a copy of the proceedings in Special Leave Petition and notice shall be served upon the respondent no.3 in advance.

R.D. DHANUKA, J.