

***IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD***

WRIT PETITION NO.285 OF 2012

1. Shri Vitthaldas Tribhuvandas Bagadia)
Age 56, Occ. Trade, R/o, Nehru Road,)
Jalna.)

2. Shri Jugalkishor Bansilal Gindodia)
Age Major, Occ. Trade,)
R/o. Jamanalal Bajaj Road, Dhule.) .. Petitioners

Versus

1. The State of Maharashtra, through the)
Secretary Industries Energy & Labour Dept.)
Mantralaya, Mumbai.)

2. The Chairman)
Maharashtra Industrial Development Corpn.)
Jalna.)

3. The Collector,)
District Jalna.)

4. The Sub-Divisional Officer/Land)
Acquisition Officer, Jalna.) .. Respondents

Mr.A.B. Kale h/f Mr. Shrikant S. Patil for the petitioner.

Mr.Y.G. Gujarathi, AGP for the respondent nos.1, 3 and 4.

Mr.S.S. Dande for the respondent no.2.

**CORAM : R.D. DHANUKA AND
SUNIL K. KOTWAL, JJ.**

RESERVED ON : 9th October 2017

PRONOUNCED ON : 20th December 2017

Judgment (Per R.D. Dhanuka, J.):

. Rule. The respondents waive service. By consent of parties, the petition is heard forthwith.

2. By this petition filed under Article 226 of the Constitution of India, the petitioners have prayed for a writ of certiorari for quashing the Notification dated 3rd July 2006 issued by the State of Maharashtra declaring the lands of the petitioners to be the Industrial Area and also impugning the orders passed by the respondents including the Notification under Section 32(2) dated 9th April 2007, under Section 32(1) dated 18th October 2007 under the provisions of the Maharashtra Industrial Development Act, 1961 (for short “the said MID Act), the award made by the Collector dated 2nd February 2010 acquiring the lands of the petitioners and the notice seeking possession of the lands of the petitioners. The petitioners also seek that the acquisition proceedings and the award made by the Collector shall be quashed and set aside in

view of the provisions of Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (for short “the said LARR Act, 2013). Some of the relevant facts for the purpose of deciding this petition are as under :-

3. It is the case of the petitioners that on 30th December 1981, the petitioners had purchased agricultural land admeasuring 35 acres, 36 gunthas comprised in Gat No.22 at Village Nagewadi, Taluka Jalna, District Jalna. The said land is located to the north of Aurangabad Jalna Road and abuts the said road. The respondent no.1 issued a notification sometime in the year 2003 acquiring certain lands in the Village Nagewadi. It is the case of the petitioners that the respondent no.1, however, by its notification dated 24th March 2003, excluded several lands from the purview of acquisition notification without assigning any reasons. It is the case of the petitioners that the land of the petitioners was not comprised in the said acquisition.

4. On 3rd July 2006, by exercising powers conferred under Section 1(3) of the said MID Act, the State Government declared the date 7th July 2006 from which chapter VI of the Act shall take effect in the area as notified and declared the said area as an Industrial Area under

Section 2(g) of the said MID Act. The petitioners' land comprising 14.53 hectares in Gat No.22 was also covered under the said notification.

5. It is the case of the respondent no.2 (MIDC) that the petitioners were served with individual notice to show cause under Section 32(2) of the said MID Act stating that the land of the petitioners was proposed to be acquired and calling upon them to file their respective objection to the acquisition, if any. It is the case of the petitioners that the said notice issued by the respondent no.3 was undated notice. Being aggrieved by the said notice, the petitioners filed their detailed objections on 5th May 2007 in the office of the respondent no.3 raising various objections. The petitioners objected to the acquisition on various grounds. It is the case of the petitioners that the petitioners did not get any reply to their objections. It is the case of the petitioners that the Chairman of the MIDC addressed a letter dated 30th July 2007 to the Collector that it had no objection if the land comprised in Gat No.38 was withdrawn from the notification for acquisition on the ground that it was located in one corner of the Industrial Area. According to the petitioners, the said land bearing Gat No.38 was just above the land of the petitioners in Gat No.22. On 9th April 2007, the notification under Section 32(2) was published in the official gazette. It is the case of the respondent no.2 that

the petitioners had filed their objections before the Collector on 5th May 2007 as is reflected in the copy of the letter annexed at Exhibit-C to the petition.

6. On 21st May 2007, the State Government issued a notification declaring the Government land admeasuring 45.31 H as Industrial Area. It is the case of the respondent no.2 and also the State Government that on 26th June 2007, the Special Land Acquisition Officer (SLAO) on receipt of the objections filed by the land owners and after giving their remarks on the same, forwarded those objections along with remarks to the acquiring body for their remarks and opinion.

7. On 11th July 2007, the acquiring body after having made their remarks forwarded the same to the competent authority for submitting the same to the State Government. On 17th September 2007, the State Government overruled the objections as filed by the land owners and communicated the same to the acquiring body as well as the SLAO. On 18th October 2007, the notification under Section 32(1) of the MID Act came to be published in the official gazette thereby vesting the said land in the government free from all encumbrances from the date of publication of the notice.

8. It is the case of the respondent no.2 that on 18th October 2007, the petitioners filed their reply to the notice of negotiation. A meeting of negotiation with the land owners was held on 18th October 2007. It is the case of the petitioners that the petitioners preferred further objections vide their letter dated 18th October 2007 addressed to the Collector seeking permission to develop their land comprised in Gat No.22 as per the proposed plan of the MIDC and also seeking permission to sell the said plot directly to the desired purchasers. The petitioners also mentioned in the said letter that since the lands were being acquired by the respondents for giving it to private parties, the rate for compensation should be fixed not acre wise but square meter wise.

9. On 9th January 2008, the SLAO made a demand for compensation amount to the competent authority. On 10th October 2008, the Government sanctioned the valuation. It is the case of the respondent no.2 that on 13th October 2008 and 27th December 2009, the MIDC which was an acquiring body paid the compensation amount. On 8th January 2010, the remaining amount was paid by the said acquiring body.

10. On 2nd February 2010, the SLAO made an award. It is the case of the petitioners that on 15th November 2008, the respondent no.3

had declared an award. However, in the said award, the lands of the petitioners were not included. After more than 3 years and 6 months from issuance of the first notification by the State Government and after elapse of the 14 months from the date of publication of the award of the Collector, the SLAO purportedly passed an award dated 2nd February 2010 in respect of the land of the petitioners by fixing the value of the land of the petitioners at a lower price of Rs.22,75,364/- per hectare. The respondent also demanded possession of the land from the petitioners under Section 32(5) of the said MID Act.

11. On 2nd February 2010, the SLAO issued a notice under Section 32(5) of the said MID Act to the petitioners for handing over the possession of the land in question. The said notice was served upon by the petitioners on 3rd March 2010. It is the case of the respondent nos.2 and 3 that on 8th September 2010, the possession of the acquired lands was handed over to the acquiring body under possession receipt. It is the case of the petitioners that the petitioners addressed a letter to the respondent no.2 alleging that some development work was being done on the land adjoining to the land of the petitioners. The petitioners had not accepted any monetary compensation for the said land and did not

wish to part with their land under any circumstances. The petitioners requested the MIDC not to carry out any development work on the land of the petitioners to avoid any further complication and also to avoid any action.

12. The petitioners thereafter made an application on 22nd June 2011 to the respondent no.2 under the provisions of the Right to Information Act, 2005 inter alia seeking reasons for excluding some lands from the purview of the acquisition proceedings. In response to the said application made by the petitioners, the respondent no.2 informed the petitioners that it had not filed any appeal against the order passed by the learned Civil Judge, Senior Division, Jalna thereby setting aside the proceedings in respect of similarly situated land in Suit No.RCS 494 of 1994 which was filed by one Shrirangprashad against the respondents. The petitioners were also informed by the Public Information Officer that few agriculturists whose lands were affected by the acquisition proceedings had also attended the meeting chaired by the District Collector, Jalna. On 14th October 2011, the petitioners filed this petition.

13. It is the case of the respondent no.2 that on 27th May 2014, the SLAO had issued a notice to the petitioners for payment of compensation and since the petitioners did not comply with the said

notice, the SLAO deposited the amount of compensation payable to the petitioners in the Civil Court on 4th September 2014. On 10th October 2016, the petitioners made a representation to the concerned Minister to denotify/release the land of the petitioners from the acquisition proceedings. It is the case of the respondent no.2 that all the plots have already been allotted to various entrepreneurs as per procedure of the allotment and third party interest is already created. Development activities have already been started on those plots.

14. Mr.Kale, learned counsel appearing for the petitioner invited our attention to various annexures to the writ petition and also to the averments made in the writ petition and also to the affidavits filed by the parties and annexures thereto. He submits that no notice was issued to the petitioners by the respondents before acquiring the lands of the petitioners though the petitioners were the owners and the persons interested in lands under acquisition. He submits that the purported notice under Section 32(2) of the said MID Act upon the petitioners was undated notice and was received by the petitioners on 5th April 2007. He submits that the said notice was replied by the petitioners on 5th May 2007 and was served upon by the SLAO. He submits that various objections including the objection to the validity of the acquisition

proceedings were raised by the petitioners in the said objection letter dated 5th May 2007. He submits that though the date of notice mentioned was of .../4/2007, the same was delivered in the office of the SLAO on 5th May 2007. In the said reply served upon the authority on 5th May 2007, the petitioners had referred to the individual notice issued by the authority dated 5th April 2007.

15. Learned counsel for the petitioners invited our attention to the letter dated 18th October 2007 addressed by the petitioners to the SLAO raising various objections in respect of the valuation of the properties under acquisition and seeking payment of market value and various other benefits. He invited our attention to the 'Final Award Statement E' annexed at Exhibit-H to the writ petition. He submits that according to the said so called final award statement, notification under Section 32(1) was issued on 18th October 2007 whereas, the notice under Section 32(2) was published on 9th April 2007. The date of declaration of the award was mentioned as 2nd February 2010. He submits that the notification was not published in the Government Gazette as required under Section 53 of the said MID Act. He invited our attention to the letter dated 2nd February 2010 addressed by the SLAO to the

petitioners stating that the notice under Section 32(1) of the said MID Act was issued on 17th September 2007.

16. It is submitted that the date of notification under Section 32(1) issued by the State Government as stated in the Final Award Statement "E" is ex facie incorrect. It is submitted that the respondent nos.1 to 3 have deliberately given different dates of notification under Section 32(2) of the said MID Act and have manipulated the records to mislead this Court and to cause prejudice to the petitioners. Learned counsel for the petitioners placed reliance on the letter dated 8th July 2011 from the MIDC to the petitioners in response to the letter addressed by the petitioners to the Public Information Officer of the MIDC and would submit that by the said letter, the Public Information Officer of MIDC could not explain as to why there was no order passed for not acquiring land bearing Gat Nos.23 to 25 and as to why Gat No.21 which was adjacent to the Plot bearing Gat No.22 of the petitioners were excluded. He submits that the land bearing Gat Nos.21, 23 to 25 and 38 were deliberately excluded and the Plot bearing Gat No.22 of the petitioners were acquired despite the petitioners vehemently raising objections.

17. Learned counsel for the petitioners invited our attention to the letter dated 2nd August 2011 addressed by the Public Relations Officer forwarding a copy of the Minutes of meeting held on 18th October 2007. He submits that in the said meeting held on 18th October 2007, the petitioners were neither heard nor their objections were considered. He submits that the petitioners never agreed to accept the valuation at a particular rate nor entered into a separate agreement with the acquiring body to accept the valuation of the lands at a particular rate. He submits that the so called award however refers to the alleged consent given by the petitioners which was never given by the petitioners. He relied upon the letter dated 6th September 2011 issued by the Stamps Authority pointing out the market rate as per the Ready Recknor during the period between 2004 to 2007 in response to the application made by the petitioners on 6th September 2011.

18. Learned counsel for the petitioners invited our attention to Section 32 of the said MID Act including the proviso thereto and submits that the land may be withdrawn from land acquisition by the State Government before taking physical possession of the land from the owners. He submits that the personal hearing to the petitioners was mandatory under Section 32(3) of the said MID Act which was grossly

violated by the respondents. No notice was given to the petitioners for handing over possession thereby violating under Section 32(7) of the said MID Act. He submits that the petitioners even today continued to be in possession of the property under acquisition.

19. Learned counsel for the petitioners invited our attention to Section 32(3) of the said MID Act and submits that since there were no agreement arrived at between the petitioners and the acquiring body in respect of the land under acquisition, valuation was required to be adjudicated upon by the Collector under Section 33(3) and an opportunity before determining the compensation was mandatory under section 33(4) of the said MID Act. He submits that since no such opportunity was ever given to the petitioners by the Collector under Section 33(4), there was no question of filing any appeal to the State Government under Section 34 of the said MID Act by the petitioners. The question of raising any dispute as to the apportionment under Section 35 also did not arise in these circumstances.

20. In so far as Section 34 of the said MID Act is concerned, it is submitted by the learned counsel that the appeal can be filed before the State Government only against the valuation as would have been

determined by the Collector and not for challenging the validity of the acquisition proceedings itself.

21. Learned counsel for the petitioners invited our attention to the averments made by the MIDC in the affidavit-in-reply dated 16th February 2016 and in particular paragraph 14 and would submit that it has been falsely alleged by the MIDC in the said affidavit that the SLAO had handed over the possession of the acquired land to the MIDC on 8th September 2010 whereas, the notice to the petitioners for accepting the compensation amount itself was issued on 27th May 2014 calling upon the petitioners to remain present for accepting the amount of compensation on 6th June 2014. The said notice was itself received by the petitioners for the first time on 9th June 2014. He submits that the allegation of the MIDC that the possession was already handed over by the SLAO to the MIDC was factually incorrect. In his alternate submission, it is submitted that no such possession could have been taken by the SLAO without making payment of compensation of the land on their acquisition to the petitioners which was offered even according to the respondents only on 27th May 2014 much after taking possession of the land in question as far back as on 8th September 2010.

22. Learned counsel for the petitioners invited our attention to a copy of the cheque dated 4th September 2014 issued by the SLAO in the name of Civil Judge (Senior Division), Jalna in the sum of Rs.3,30,61,039/-. He submits that the said cheque would not indicate the fact that the said amount was alleged to have been deposited by the SLAO in respect of the lands of the petitioners. The respondent no.2 has not annexed any copy of the covering letter along with the said cheque dated 4th September 2014.

23. Learned counsel for the petitioners invited our attention to the alleged possession receipt dated 8th September 2010 annexed at Exhibit R-2 to the petition recording that the Nayab Tahsildar had allegedly handed over possession of various lands including the lands of the petitioners to the MIDC. He submits that since the said Nayab Tahsildar was not in possession of the lands in question, the question of handing over possession thereof to the MIDC on 8th September 2010 or any subsequent date did not arise. He submits that in any event, the property was to be acquired by the SLAO, the said land could not have been handed over by the Naib Tahsildar to the MIDC. He submits that though the lands bearing Gat Nos.21 and 38 were dropped from acquisition, the said alleged possession receipt would indicate that the

possession of the lands were also handed over from Naib Tahsildar to the MIDC.

24. Learned counsel for the petitioners invited our attention to the award dated 2nd February 2010 annexed at Exhibit R-3 to the petition and would submit that the said document cannot be construed as an award but at the most as an order under Section 33(2) of the said MID Act. He submits that the said document itself indicate that the same is an order for compensation under Section 33(2) of the said MID Act which provision refers to a consent award which was never given by the petitioners. He submits that the said document itself was illegal and thus the lands of the petitioners never stood acquired. He submits that the said award dated 2nd February 2010 refers to the amount alleged to have been fixed by the High Power Committee. The respondents have not produced any record of the proceedings, if any, before the said High Power Committee which has alleged to have fixed the alleged compensation. He submits that there was no consent given by the petitioners at a particular rate as mentioned in the so called award nor any agreement entered into between the petitioners and the respondents, no such order could have passed under Section 33(2) of the said MID Act.

25. Learned counsel for the petitioners invited our attention to the averments made in the affidavit-in-reply dated 29th September 2017 filed by the respondent nos.3 & 4 and would submit that though the respondent nos.3 & 4 have referred to the meeting held by the Collector with the other officers on 18th October 2007, in the said affidavit, no decision has been pointed out by the Sub-Divisional Officer and Land Acquisition Officer, Jalna in so far as the plot of the petitioners is concerned. No Minutes of meeting are either annexed or pointed out in the affidavit.

26. Learned counsel for the petitioners invited our attention to the averments made in paragraph 3 of the affidavit-in-rejoinder dated 28th April 2016 in so far as the possession of the land of the petitioners was to be acquired for the approach road or not. Learned counsel for the petitioners also invited our attention to the averments made in paragraph 7 of the said affidavit-in-rejoinder and would submit that the document annexed to the said affidavit-in-rejoinder and more particularly the Survey Report would clearly indicate the physical possession of the land in question with the petitioners and not with the MIDC. He submits that though the petitioners have made an application for copies of the entire

land acquisition proceeding records on 18th February 2016, copies are not made available by the Authority to the petitioners till date.

27. It is submitted by the learned counsel for the petitioners that the entire acquisition proceedings were initiated with malafide intention by the respondents. The acquisition proceedings were not in compliance with Sections 32 and 33 of the said MID Act. He submits that since neither the possession of the lands in question have been taken nor any compensation payable to the petitioners within five years from the date of the alleged award dated 2nd February 2010 in view of Section 24 of the LARR Act, 2013 the land acquisition proceedings initiated under the provisions of the Land Acquisition Act, 1894 have lapsed. If the respondent chooses to acquire the said land now, the respondent will have to initiate the said land acquisition proceedings under the provisions of the Land Acquisition Act, 1894 and will have to pay compensation in accordance with the provisions of the said LARR Act, 2013.

28. It is submitted that since there is no time limit provided under the MID Act for passing of an award, the award is barred after 3 years from the date of notification issued under Section 32(2) of the said MID Act. He placed reliance on Section 105 of the said LARR Act,

2013 and would submit that in view of those provisions, all the provisions of the said LARR Act, 2013 would apply even to the acquisition made earlier under the provisions of either Maharashtra Regional and Town Planning Act, 1966 or the said MID Act.

29. Learned counsel for the petitioners invited our attention to the additional affidavit filed by the respondent nos.3 & 4 and would submit that the petitioners came to know about the alleged award dated 2nd February 2010 only when the affidavit-in-reply was filed by the respondent nos.3 & 4.

30. It is submitted by the learned counsel for the petitioners that the State Government was required to issue individual notices to the land owners including the petitioners before publication of notice under Section 32(2) of the said MID Act in the newspaper having wide circulation.

31. Learned counsel for the petitioners placed reliance on the judgment of this Court in the case of ***Kakaji S/o Appa Bagal (died LRs.) Vs. The State of Maharashtra & Ors.*** delivered on 23rd July 2013 in CRA No.286 of 2011 and in particular paragraphs 29 and 30 in support

of the submission that if consent award is made under Section 11(2) of the Land Acquisition Act, 1894, the owner or the person interested is not entitled to seek a reference under Section 18 of the Land Acquisition Act, 1894. He submits that if the so called award is considered as a consent award, the petitioners would not be able to make any reference for enhancement of the amount of compensation under Section 18 of the Land Acquisition Act, 1894.

32. Mr.Dande, learned counsel appearing for the respondent no.2-MIDC, on the other hand, submits that by exercising powers under Section 1(3) of the said MID Act, the Government of Maharashtra declared the date 7th July 2006 to be the date from which Chapter VI of the said MID Act shall take effect in the area in question as an Industrial Area under Clause 2(g) of the said MID Act. He submits that on 5th April 2007, the petitioners were issued individual notices to show cause under Section 32(2) of the MID Act. On 9th April 2007, notification under Section 32(1) of the said MID Act was published in the official gazette. He submits that all the formalities of the proposed lands of the development of the industrial area were already completed and final notification was already issued.

33. It is submitted that in view of the notification issued under Section 32(1) of the said MID Act, the land in question already stood vested in the State of Maharashtra. The petitioners were already given reasonable opportunity to file their objections. The petitioners had in fact filed their objections in response to the individual notices issued upon them. The objections filed by the petitioners were also considered by the authority. The petitioners did not furnish any evidence before the authority showing the land value as contended by the petitioners. All objections received by the authority including the objections of the petitioners were considered and were rejected. The SLAO, on receipt of the objections filed by the land owners, made his remarks on those objections and forwarded those objections with remarks on 26th June 2007 to the acquiring body for their remarks and opinion. On 11th July 2007, the authority of the acquiring body after having made their remarks forwarded the same to the competent authority for submitting the objections along with remarks to the State Government. On 17th September 2007, the State Government overruled the objections as filed by the land owners and communicated the same to the acquiring body as well as the SLAO.

34. It is submitted by the learned counsel that the petitioners had filed their reply to the notice of negotiation on 18th October 2007. A meeting of negotiation with the land owners were held on 18th October 2007. On 31st December 2007, the SLAO submitted valuation note for sanction to the learned Collector and demanded Rs.2557 lakh towards compensation. On 10th October 2008, the State Government sanctioned the valuation. It is submitted by the learned counsel that the acquiring body i.e. MIDC paid the compensation amount as demanded by the SLAO on 27th December 2009. On 8th January 2010, the acquiring body paid remaining amount.

35. In so far as the award dated 2nd February 2010 made by the SLAO is concerned, it is submitted by the learned counsel that the petitioners cannot read the heading of the award and cannot be allowed to contend that the said document could not be construed as an award under Section 11 of the Land Acquisition Act, 1894 or that the said document was only an order under Section 32(2) of the MID Act.

36. It is submitted by the learned counsel for the MIDC that the petitioners were issued notices on 2nd February 2010 under Section 32(5) of the said MID Act for handing over the possession of the land in

question. On 3rd March 2010, the petitioners acknowledged the receipt of the said notice under Section 32(5). On 8th September 2010, the possession of the acquired land was taken by the authority and was handed over to the MIDC under a possession receipt dated 8th September 2010. The petitioners thereafter vide letter dated 27th January 2011 made a representation not to surrender the land with the authorities and not to carry out any development work.

37. In so far as the issue of personal hearing raised by the petitioners is concerned, it is submitted by the learned counsel that the petitioners have specifically admitted that they had appeared before the authority and had filed their written objections. He submits that in any event under Section 32(3) of the said MID Act, personal hearing to each and every petitioners in respect of their lands under acquisition is not mandatory. He submits that under the provisions of the Land Acquisition Act, 1894, there is no provision for lapsing of proceedings for failure of the authority to declare award within two years under the provisions of the Land Acquisition Act, 1894. The scheme of Chapter VI of the said MID Act is totally different than the provisions of the Land Acquisition Act, 1894. He submits that the Land Acquisition Act is a general Act and there is a specific provision for acquisition of the land by the State

for public purpose and acquisition of land by State for companies. The said MID Act is, on the other hand, designed for the sole purpose of development of industrial areas and industrial estates and growth and development of industries within the State.

38. Learned counsel for the MIDC invited our attention to various documents forming part of the record in so far as determination of compensation in respect of the land in question is concerned, including the correspondence exchanged between the parties. The petitioners were issued notices to accept the amount of total compensation of Rs.3,30,61,039/- for the acquired land which included the land value and the other benefits including the interest on delayed period if any. The petitioners were requested to remain present in the office for acceptance of the said amount of compensation on 6th June 2014. The petitioners, however, did not appear and did not accept the amount of compensation. The SLAO has thus deposited the said amount of compensation with the Civil Court, Jalna on 5th September 2014.

39. It is submitted by the learned counsel that after receiving the possession of the acquired lands, those lands are already handed over to various allottees in terms of the public purposes. The petitioners,

however, has filed this writ petition after about six years of issuance of notification and also challenging the award after declaration and vesting of lands more than after two years. He submits that the petitioners did not apply for enhancement of compensation by invoking the remedy of Section 18 of the Land Acquisition Act, 1894. The amount determined by the authority towards compensation has thus attained finality.

40. In so far as the allegation of malafides raised by the petitioners is concerned, it is submitted by the learned counsel that in the present case, the land admeasuring 216.76 H had been acquired and out of which the land owners of the lands admeasuring about 194.52 H had consented for the acquisition of land which indicates that the allegation of malafide raised by the petitioners is totally frivolous and without any basis. He submits that in the judicial review, it is not open to this Court to examine the aspect of suitability as a Court of appeal and substitute the opinion of the Government with its own opinion on that aspect.

41. It is submitted by the learned counsel that since the land has already been vested absolutely in the State Government upon issuance of notification under Section 32(1) of the said MID Act and publication

thereof in the official gazette, the question of challenging the acquisition proceedings on the ground that no individual notices were issued to the petitioners before publication of notice under Section 32(2) of the said MID Act in the newspaper did not arise.

42. In so far as the allegations of the petitioners that the land comprised in Gat No.38 is withdrawn from the proceedings is concerned, it is submitted that the petitioners have not produced any notification of deletion on the record in support of the said contention and the same is totally false and incorrect.

43. In so far as the valuation determined by the authority is concerned, it is submitted by the learned counsel that the objection dated 18th October 2007 filed by the petitioners clearly indicates that the petitioners themselves have attended a meeting with the authority and requested to determine the amount of compensation by granting all the benefits alleged to be due to the petitioners in respect of lands under acquisition. He submits that the question of challenging the validity of the acquisition therefore even otherwise did not arise. The amount of compensation demanded by the petitioners was not accepted by the Authority. Once the said amount was deemed to have been accepted by

the petitioners as and by way of compensation, the all other benefits payable to the petitioners under the acquisition under the provisions of the Land Acquisition Act, 1894 have been paid by the authority to the petitioners. The petitioners however did not withdraw the said amount deposited by the SLAO in the Civil Court.

44. In so far as the submission of the learned counsel for the petitioners that the entire Gat No.21 is deleted from the acquisition proceedings is concerned, it is submitted by the learned counsel that only 1 H land out of the said gat number was deleted as the owner was physically handicapped and consented for the acquisition of the remaining land. This decision of the competent authority could not be considered as malafide as sought to be contended by the petitioners. He submits that the development activities over the lands acquired have already been started and such lands have been utilised for the purpose for which the land has been acquired. He submits that since the land was vested in the Government and was handed over to the acquiring body, the acquisition proceedings cannot lapse on such ground.

45. Mr.Dande, learned counsel for the MIDC placed reliance on the following Judgments :-

- (i) *Government A.P. & Ors. Vs.Kollutla Obi Reddy & Ors., (2005) 6 SCC 493;*
- (ii) *Manakchand Sarupchand Lunavat & Ors. Vs. State of Maharashtra & Ors., 1989 (2) BomCR 445;*
- (iii) *A.P. Industrial Infrastructure Coprn. Ltd. Vs.Chinthamaneni Narsimha Rao & Ors., 2012 (12) SCC 797;*
- (iv) *The Rajasthan State Industrial Development & Investment Corporation Vs. Diamond and Gem Development Corporation Ltd. & Anr, 2013(5) SCC 470;*
- (v) *Swaika Properties Pvt. Ltd. Vs. State of Rajasthan & Ors., (2008) 4 SCC 695;*
- (vi) *Brij Pal Bhargava & Ors. Vs.State of U.P., 2011 (5) SCC 413;*
- (vii) *May George Vs. Special Tahsildar, 2010 (13) SCC 98;*
- (viii) *Municipal Council Ahmednagar & Anr. Vs.Shah Hyder Beig & Ors., 2000 (3) Mh.L.J. 1;*
- (ix) *Mahadeo Bajiroa Patil Vs.State of Maharashtra, 2006 (1) Mh.L.J. 28;*
- (x) *The Special Deputy Collector, Land Acquisition CMDA Vs. J.Shivprakasam & Ors., (2011) 1 SCC 330;*
- (xi) *Ramji Veerji Patel & Ors. Vs.Revenue Divisional Officer, 2011 (10) SCC 643;*
- (xii) *Bhagchand Gvardhan Naik Vs. State of Maharashtra, 2005 (4) Mh.L.J. 161;*
- (xiii) *V.Chandrasekharan & Anr. Vs. Administrative Officer & Ors., (2012) 12 SCC 133;*
- (ixv) *Shri Ramtanu Co-operative Housing Society Ltd. & Anr. Vs. State of Maharashtra & Ors., (1970) 3 SCC 323;*

- (xv) ***Kuldip K. Kamat & Anr. Vs. SLAO No.III, Kolhapur & Ors., 1996 (5) BomCR 170;***
- (xvi) ***Ganpat Balaji Parate Vs.State of Maharashtra & Ors., (1991) 2 Mh.L.J. 1515;***
- (xvii) ***Thakurbai Piraji Pawar Vs. State of Maharashtra & Ors., Writ Petition No.646 of 1994 decided on 6th August 2010 by the Aurangabad High Court ;***
- (xviii) ***Prabhakar Bhau Bhoir & Ors. Vs. The Collector, Pune & Ors.,Writ Petition No.1679 of 2014 decided on 17th October 2015;***
- (xix) ***Bhaurao s/o Deorao Tupe vs. State of Maharashtra & Ors., Writ Petition No.3706 of 2007 decided on 27th July 2009;***
- (xx) ***Uttam Deorao Kakade Vs. The State of Maharashtra & Ors., Writ Petition No.7094 of 2008 decided on 3rd December 2008;***
- (xxi) ***Banda Development Authority, Banda Vs.Moti Lal Agrawal & Ors., 2011 (5) SCC 394;***
- (xxii) ***Gurcharan Singh & Ors. Vs.State of Punjab & Ors., SLP No.8565-8567 of 2011 decided on 4th July 2014;***
- (xxiii) ***Saraswati Asaram Jadhav & Ors. Vs. The State of Maharashtra & Anr., Writ Petition No.635 of 2015 decided on 4th October 2016;***
- (xxiv) ***Bhagwan Shripati Bodke Vs. The Collector, Pune, Writ Petition No.8303 of 2012 decided on 11th December 2013;***

46. Mr.Gujarathi, learned AGP appearing for the respondent no.1, 3 and 4, on the other hand, opposes this petition on various grounds and invited our attention to the affidavit-in-reply filed by the State

Government and also produced the files containing the original documents and records for perusal of this Court.

47. It is submitted by the learned AGP that the SLAO had followed the provisions of the Land Acquisition Act, 1894 and had issued individual notices upon the petitioners inviting objections. The petitioners had raised objections regarding acquisition of land in question and had also filed a separate objection regarding valuation of the land as demanded by the petitioners. He submits that the authority thereafter had made comments on the objections received from the land owners including the petitioners and had forwarded those objections with comments to the Government. The Government in turn after rejecting those objections had referred the objections along with the notes to the acquiring body. He submits that the lands in question had already been vested in the State Government free from all encumbrances, once the notice under Section 32(1) of the said MID Act was issued and published in the newspaper and government gazette. The petition is totally devoid of merits. There is gross delay in filing writ petition by the petitioners and on that ground also, the petition deserves to be dismissed.

48. In so far as the allegation made by the petitioners about the dates of issuance of various notifications is concerned, he produced the original files for perusal and consideration of this Court and would submit that each and every such allegation made by the petitioners is thus totally frivolous, without any basis and contrary to the record. The petitioners having replied to the individual notices clearly indicates that the individual notices were served upon the petitioners by the SLAO as contemplated under the provision of Section 32(2) of the said MID Act.

49. Learned AGP submits that the award dated 2nd February, 2010 was passed under section 11 of the Land Acquisition Act and the said document was not an order under section 33(2) of the MID Act as sought to be canvassed by the petitioners. He submits that in the meeting held by the District Collector, the rate of compensation for lands to be acquired for the purpose of Jalna MIDC, Phase-III was proposed at Rs.4,10,000/- per acre. The reference to the land bearing gat nos.21 and 22 was excluded because the said land was adjacent to the road and the rates for the same was agreed to be determined later on. The Regional Manager, MIDC by his letter dated 6th June, 2009 addressed to the CEO, MIDC mentioned that the Collector had determined the rates of those lands as Rs.22,75,360/- per hectare. The Government of Maharashtra

vide the order dated 30th December, 2009 approved the rate as determined for the gat nos.21 and 22. The said rate was already approved by the High Power Committee of MIDC and accordingly the award providing the said rate to the land owners was declared.

50. It is submitted that a notice under section 32(5) of the MID Act was issued by the petitioners on 2nd February, 2010 informing that within 30 days from the date of the said notice, possession of the land to be handed over to the State Government. The petitioners however, did not comply with the said notice. The Sub Division Officer, Jalna accordingly took possession of the said lands as per the provisions of section 32(6) of the MID Act and possession thereafter handed over to the MIDC as per the provisions of law on 8th September, 2010 vide possession receipt executed in favour of the MIDC. He submits that the Special Land Acquisition Officer has already deposited an amount of Rs.3,30,61,039/- towards compensation in the Court of the learned Civil Judge, Senior Division, Jalna as per the provisions of section 36(2)(3) of the MID Act. He submits that the said award dated 2nd February, 2010 has to be read in toto and not by referring only to section 33(2) of the MID Act referred therein. It is a common ground that the said award dated 2nd February, 2010 was not a consent award. Learned AGP invited our attention to the

various documents annexed to the affidavit in reply dated 29th September, 2017 for consideration of this Court. He submits that the impugned award was passed after rendering full opportunity to the petitioners to lodge the objections and also to produce the details in support of the compensation claimed by the petitioners.

51. Mr.Kale, learned counsel appearing for the petitioners in rejoinder concedes that section 32(3) of the MID Act does not contemplate any individual notice to be issued before publication of the notice under section 32(2) of the MID Act in the newspapers. He submits that the petitioners had demanded personal hearing in the objection filed by the petitioners on 5th May, 2007, which was not granted by the authority though was mandatory before initiating any further action by the authority against the petitioners in respect of the lands in question. He submits that the State Government in the earlier affidavit, which was not tendered in this Court, had contended that the award dated 2nd February, 2010 was the consent award and thus cannot be allowed to take a different stand at this stage against them.

52. It is submitted that none of the respondents could point out any agreement alleged to have been executed between the petitioners and

the Special Land Acquisition Officer accepting the rate as awarded by the Special Land Acquisition Officer in the alleged award. He submits that the Government has not finalized the rates in respect of the property under acquisition in accordance with section 33(3) of the MID Act. No opportunity as contemplated under section 33(4) of the MID Act was offered to the petitioners. He submits that in these circumstances, the acquisition proceedings initiated by the Special Land Acquisition Officer has lapsed in view of the Special Land Acquisition Officer not having taken possession of the land in question within six months from the date of award and having not paid compensation within the same period. He submits that if at this stage, the State Government or the CIDCO proposes to issue a fresh notification for acquisition of the land in question, the provisions of 2013 Act would be attracted and in that event the petitioners would be entitled to fair and present market rate in respect of the land in question. It is submitted that the use of the land in question cannot be divested for any other purpose after issuance of notification under section 32(1) of the MID Act by the acquiring body.

53. It is submitted by the learned counsel that even if the said document dated 2nd February, 2010 is considered as an award within the meaning of section 11 of the Land Acquisition Act, a perusal of the said

so called award would indicate that it is not in compliance with section 11 of the Land Acquisition Act. In the said so called award, only the names of the owners of the land bearing nos.21 and 22 are mentioned and nothing else.

54. Mr.Kale, learned counsel for the petitioners strongly placed reliance on an unreported judgment of this Court delivered on 11th December, 2013 in case of ***Bhagwan Shripati Bodke vs. The Collector, Pune and Others*** in Writ Petition No.8303 of 2012, which was also relied upon by Mr.Dande, learned counsel for the MIDC. He submits that even if the validity of acquisition of the lands in question is upheld, in view of section 33(1) of the MID Act, the State Government is under an obligation to pay compensation for such acquisition which has to be determined in accordance with the provisions of section 33 of the MID Act. He submits that even if it is considered by this Court that there was no consent by the petitioners to accept the compensation as awarded by the Special Land Acquisition Officer, in that event the compensation has to be determined in accordance with the provisions of section 33(3) of the MID Act which the respondents have failed to determine. The respondents did not initiate any proceedings under section 33(3) of the MID Act for determination of compensation.

55. It is submitted that if this Court accept the submission of the petitioners that there was no consent or agreement between the parties as contemplated under section 33(1) of the MID Act in respect of the amount of compensation, since there was no adjudication by the Collector as contemplated under section 33(3) of the MID Act, this Court shall remand the matter back to the learned Collector for adjudication without prejudice to the rights and contentions of the petitioners. He submits that the said judgment delivered by the Division Bench of this Court in ***Bhagwan Shripati Bodke vs. The Collector, Pune & Others*** would assist the case of the petitioners and not MIDC.

REASONS AND CONCLUSIONS :-

56. A perusal of the record clearly indicates that the individual notice to show cause under Section 32(2) of the said MID Act stating that the land of the petitioners was proposed to be acquired and calling upon them to file their respective objections to the acquisition, if any, was duly served upon the petitioners. The petitioners have not disputed that in response to the said notice, the petitioners had filed their detailed objections on 5th May 007 in the office of the respondent no.3 raising various objections. In the said letter raising objections which was delivered in the office of the respondent no.3, the petitioners had referred

to notice issued by the respondent no.3 however without any date. In our view, there is thus no substance in the submission of the learned counsel for the petitioners that no individual notice to show cause under Section 32(2) of the said MID Act was issued upon the petitioners informing about the proposed acquisition and calling upon them to file their respective objections to the acquisition, if any.

57. Learned AGP had produced the file containing the original documents in respect of the subject matter of this petition for perusal of this Court which also clearly indicated that such individual notice was served upon the petitioners under Section 32(2) of the said MID Act which was responded by the petitioners which response was received by the respondent no.3 on 5th May 2007. The petitioners having filed objections to the notice issued by the respondent no.3 thus cannot be allowed to urge that no individual notice was served upon the petitioners.

58. A perusal of the record further indicates that the objections raised by the petitioners were considered by the authorities along with notes forwarded to the State Government for taking appropriate action. The State Government had rejected the objections raised by the petitioners and communicated rejection of the objections to the acquiring body as well as to the SLAO.

59. In so far as the submission of the learned counsel for the petitioners that State Government was required to issue individual notices to the land owners including the petitioners before publication of notice under Section 32(2) of the said MID Act in the newspaper having wide circulation is concerned, a perusal of Section 32(2) read with 32(1) clearly indicates that no such individual notices to the land owners before publication of notice under Section 32(2) of the said MID Act in the newspaper is contemplated under the said provision. Be that as it may, learned counsel for the petitioners during the course of arguments accepted this position and did not press this issue at later stage.

60. Under Section 32(1) of the said MID Act, State Government is empowered to acquire land by publishing a notice in the Official Gazette specifying the purpose for which such land is required and stating therein that State Government has decided to acquire land in pursuance of Section 32(1) upon publication of such notice, the land which is subject matter of such notice shall on and from the date of such publication vest absolutely in the State Government free of all encumbrances. This Court in the case of ***Prabhakar Bhau Bhoir & Ors. Vs. The Collector, Pune & Ors. (supra)*** has held that upon publication of such notice under Section 32(1) of the said MID Act, the acquired

land absolutely vests in the State Government free of all encumbrances. It is further held that as the vesting is complete after a notice under Sub-section (1) of Section 32 of the said MID Act is published in the Official Gazette, there cannot be lapsing of acquisition. There is no such provision in the said MID Act for lapsing of acquisition. In our view, there is thus no substance in the submission made by the learned counsel for the petitioners that the acquisition proceedings had lapsed. The judgment of this Court in the case of ***Prabhakar Bhau Bhoir & Ors. Vs. The Collector, Pune & Ors. (supra)*** would apply to the facts of this case. We are respectfully bound by the said judgment.

61. In our view, there is thus no substance in the submission of the learned counsel for the petitioners that there was delay on the part of the SLAO in rendering an award allegedly after more than 3 years and 6 months from issuance of the first notification by the State Government and after elapse of the 14 months from the date of publication of the award of the Collector, the SLAO made an award dated 2nd February 2010 in respect of the land of the petitioners. Be that as it may, even if there is any alleged delay, property having already vested in the State Government, the acquisition cannot lapse on that ground.

62. Division Bench of this Court in the case of ***Ganpat Balaji Parate Vs. State of Maharashtra & Ors. (supra)*** has held that the notification under Sub-section (1) of Section 31 of the said MID Act is in the nature of the notification under Section 4 of the Land Acquisition Act, 1894 and at that stage, hearing is neither necessary nor feasible. The decision at that stage essentially pertains to a broad policy matter based exclusively on an expert opinion. Therefore, there is nothing unreasonable and unfair in not granting hearing at that stage. In our view, the said judgment of this Court in the case of ***Ganpat Balaji Parate Vs. State of Maharashtra & Ors. (supra)*** would squarely apply to the facts of this case. Even if no personal hearing is granted to the petitioners by the respondent no.3 before issuance of notification under Section 31(1) of the said MID Act, the acquisition of lands of the petitioners cannot be set aside on that ground.

63. Large number of lands are acquired by the acquiring body and thus at the stage of issuance of notification under Section 31(1) of the MID Act, personal hearing to the land owners is neither necessary nor feasible. There is thus no merit in the submission of the learned counsel for the petitioners that for want of personal hearing to the petitioners, acquisition of properties by the acquiring body is bad-in-law.

The petitioners had already raised objections in response to the individual notice issued by the respondent no.3 which was duly considered by the respondents from time to time. Division Bench of this case in the case of ***Kuldip K. Kamat & Anr. Vs. SLAO No.III, Kolhapur & Ors. (supra)*** after considering the provision of Section 32(2) of the said MID Act and Rule 27 of the Maharashtra Industrial Development Rules, 1962 has held that non compliance of Rule 27 by acquiring body does not mean that the notification will become a nullity. It is held that the scheme of the MID Act is different from the scheme under Land Acquisition Act. Rule 27 of the MID Rules cannot equated with section 11-A of the Land Acquisition Act.

64. Supreme Court in the case of ***Shri Ramtanu Co-operative Housing Society Ltd. & Anr. Vs. State of Maharashtra & Ors. (supra)*** has construed the provisions of the Land Acquisition Act, 1894 and also the provisions of the Maharashtra Industrial Development Act, 1961 and has held that 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, the MID Act is on the other hand is designed for the sole purpose of development of industrial area and industrial estates and growth and

development of industries within the State. Industrial undertakings or persons who are engaged in industries all become entitled to the facilities on such industrial growth. Under the Land Acquisition Act, acquisition is at the instance of and for the benefit of a company whereas under the said MID Act, acquisition is solely by the State for public purposes. The two Acts are dissimilar in situations and circumstances. Supreme Court in the said judgment also considered different method of computation of compensation under these two different Acts.

65. Supreme Court in the case of *May George Vs. Special Tahsildar (supra)* while construing the provisions of the Land Acquisition Act, 1894 has held that once the land is vested in the State, it cannot be divested even if some irregularity is found in the acquisition proceedings. It is held that inspite of fact that Section 9 notice has not been served upon the person interested, he could still claim the compensation and ask for making the reference under section 18 of the Act. There is nothing in the Act to show that non-compliance thereof will be fatal or visit any penalty. It is held that even if there an irregularity in service of notice under sections 9 and 10, it could be a curable irregularity and on account thereof, Award under Section 11 would not become invalid.

66. In so far as the submission of the learned counsel for the petitioners that the dates of various notifications issued by the respondents mentioned in the 'Final Award Statement E' annexed at Exhibit-H to the writ petition are false and are deliberately given by the respondents which would amount to manipulation of the records and given with a view to mislead this Court and to cause prejudice to the petitioners is concerned, in our view, this submission of the learned counsel for the petitioners is totally without merit. A perusal of the record clearly indicates that notice under Section 32(1) of the said MID Act was issued on 18th October 2017. Notification under Section 32(2) was issued on 9th April 2007. It is not in dispute that the respondents had demanded the possession of the land from the petitioners under Section 32(5) of the said MID Act and the petitioners had also claimed compensation thereafter before the SLAO. In our view, thus even if there was any date wrongly mentioned in the 'Final Award Statement E' annexed at Exhibit-H to the writ petition, neither the award cannot be set aside on such ground nor such inadvertent error, if any, can be considered as an action of malafide on the part of the respondents against the petitioners.

67. A perusal of the record indicates that the petitioners have challenged the notification dated 3rd July 2006 issued by the respondent no.1, notification dated 9th April 2007 issued under Section 32(2) and under Section 32(1) dated 18th October 2007 and the award dated 2nd February 2010 by filing this writ petition on 14th October 2011. There is thus gross delay on the part of the petitioners to impugn notices/ notifications issued by the State Government and delay also in challenging the impugned award dated 2nd February 2010. Supreme Court in the cases of ***Government A.P. & Ors. Vs.Kollutla Obi Reddy & Ors. (supra)***, ***A.P. Industrial Infrastructure Coprn. Ltd. Vs. Chinthamaneni Narsimha Rao & Ors. (supra)***, ***Swaika Properties Pvt. Ltd. Vs. State of Rajasthan & Ors. (supra)*** and this court in the case of ***Municipal Council, Ahmednagar & Anr. Vs.Shah Hyder Beig & Ors. (supra)*** has held that in view of gross delay in filing writ petition on the part of the land owners in challenging the acquisition proceedings, the Court cannot entertain such writ petitions. The principles laid down by the Supreme Court and this Court in the aforesaid judgments would squarely apply to the facts of this case. In our view, there is gross delay on the part of the petitioners in filing writ petition. Possession of the lands in question has already been handed over to the concerned parties. This Court is thus not inclined to entertain this petition also on that

ground and cannot set aside the acquisition proceedings which are concluded long back.

68. In so far as the submission of the learned counsel for the petitioners that possession of the land in question has not been taken by the SLAO or by any of the respondents and that the possession of the land continues with the petitioners is concerned, a perusal of the record indicates that on 2nd February 2010, SLAO had issued a notice under Section 32(5) of the said MID Act to the petitioners for handing over possession of the land in question. On 3rd March 2010, the petitioners had acknowledged the said notice under Section 32(5) of the said MID Act. On 8th September 2010, the possession of the acquired land was taken by the authority and was handed over to the MIDC under the possession receipt dated 8th September 2010. The petitioners had made a representation vide their letter dated 27th January 2011 not to surrender the land with the authorities and not to carry out any development work. Copy of the possession receipt is placed on record by acquiring body. We are thus not inclined to accept the submission of the learned counsel for the petitioners that physical possession of the land in question has not been taken by the SLAO or by the acquiring body and the same continues to be in physical possession of the petitioners. The persons

who are allotted such lands after handing over possession of the land by the acquiring body have already started development on the said properties long back.

69. Supreme Court in the case of ***Brij Pal Bhargava & Ors. Vs.State of U.P. (supra)*** has considered the possession receipt produced by the acquiring body who had taken possession of the properties after going on the spot. Supreme Court has held that the pragmatic approach has to be adopted by the Court while considering as to whether possession has been taken or not. Supreme Court considered report and held that not only the possession was taken, but there were activities going on at the behest of the acquiring body.

70. Supreme Court in the case of ***Banda Development Authority, Banda Vs.Moti Lal Agrawal & Ors. (supra)*** has held that action of the concerned State authorities to go to the spot and prepare panchnama showing delivery of possession was sufficient for recording a finding that actual possession of the entire acquired land had been taken and handed over to the acquiring body. It is held that if the acquired land is vacant, the act of the concerned State authority to go to the spot and prepare a panchnama will ordinarily be treated as sufficient to constitute

taking of possession. It is further held that if the acquisition is of a large tract of land, it may not be possible for the acquiring/designated authority to take physical possession of each and every parcel of the land and it will be sufficient that symbolic possession is taken by preparing appropriate document in the presence of independent witnesses and getting their signatures on such document. Principles laid down by the Supreme Court in the aforesaid judgment would squarely apply to the facts of this case. We are respectfully bound by the said judgment. In our view, the panchnama produced on record by the acquiring body showing the factum of taking possession of the land in question and thereafter handing over the same to various parties is sufficient to hold that the physical possession of the land in question was already taken by the respondents from the petitioners and was handed over to various parties. Be that as it may, the petitioners even otherwise could not show any material on record before this Court that after making an award by the SLAO and after depositing the compensation in the Civil Court, the petitioners still continues to be in possession of the said land. The claim of the possession of the land made by the petitioners in this petition is totally devoid of merit and is contrary to the factual position on site.

71. In so far as the submission made by the learned counsel for the petitioners that action on the part of the acquiring body but exclude the land bearing Gat No.21 which was adjacent to the Plot bearing Gat No.22 of the petitioners and in view of the fact that acquiring body could not explain as to why no order was passed for not acquiring land bearing Gat Nos.23 to 25 is concerned, it is the case of the acquiring body that the land admeasuring 216.76 H had been acquired and out of which the land owners of the lands admeasuring about 194.52 H had consented for the acquisition of land. We are inclined to accept the submission made by the learned counsel for the acquiring body. There is no merit in the submission of the learned counsel for the petitioners that any mala fides can be attributed in respect of such land on the part of the acquiring body.

72. In so far as the land comprises in Gat No.38 is concerned, it is the case of the respondents that the petitioners had not produced any notification of deletion of land and the said contention of the petitioners is false and incorrect. A perusal of the record indicates that no material is produced by the petitioners in support of the contention that the land comprises in Gat No.38 is withdrawn from the acquisition proceedings. In our view, there is thus no substance in the submission of the learned counsel for the petitioners.

73. In so far as the submission made by the learned counsel for the petitioners that the entire Gat No.21 is deleted from the acquisition proceedings is concerned, it is the case of the respondents that only 1 H land out of the said gat number was deleted as the owner was physically handicapped and had consented for the acquisition of the remaining land. We are not inclined to accept the submission of the learned counsel for the petitioners that the respondent has acted mala fide in deleting 1 H land out of large plot in these circumstances. We are inclined to accept the submission and explanation given by the acquiring body in this regard as true and correct. The development activities over the land acquired had already started.

74. Supreme Court in the case of ***V.Chandrasekharan & Anr. Vs. Administrative Officer & Ors. (supra)*** has held that once the land is vested in the State, free from all encumbrances, it cannot be divested and proceedings would not lapse, even if an award is not made within the statutorily stipulated period and also cannot be restored to the persons interested or land holders, even if it is not used for the purpose for which it was so acquired, or for any other purpose either.

75. Be that as it may, this Court cannot decide suitability or unsuitability of the land considered by the acquiring body for the purpose

of acquisition in writ jurisdiction. The acquisition of the land based on such submission cannot be declared illegal by this Court in a writ jurisdiction on this ground.

76. In so far as the submission of the learned counsel for the petitioners that the impugned award dated 2nd February 2010 is not an award but at the most as an order under Section 33(2) of the said MID Act is concerned, a perusal of the document itself annexed at Exhibit 'R-3' dated 2nd February 2010 indicates that on the top of the said document, it is mentioned "Order under Section 33(2) of the Maharashtra Industrial Development Act, 1961." However, in the later part of the said document, it is clearly provided that various lands described in the said document including the land bearing Survey No.22 were not included in the consent award declared by the then Land Acquisition Officer on 15th November 2008 as the said land was adjacent to highway and it was felt necessary to pass a separate consent award under Section 33(2) of the Act. In the said document, a reference was also made to the notice under Section 32(2) and notification under Section 32(1). The names of various parties including the name of the petitioners were also mentioned. In our view, the entire document has to be read as a whole and not heading of the document to ascertain whether the said document was an award or not.

Be that as it may, the petitioners themselves have challenged the said award dated 2nd February 2010 in the writ petition.

77. It is not in dispute that the petitioners lodged their claim for compensation vide letter dated 18th October 2007 before the respondents and submitted their claim for compensation vide letter dated 18th October 2007. A perusal of the record indicates that the said document was considered by the respondents for the purpose of determining the amount of compensation under the provisions of Section 33 of the said MID Act. It is the case of the respondents that a meeting of negotiation was held with the land owners on 18th October 2007. On 31st December 2007, SLAO had submitted valuation note for sanction to the learned Collector and demanded Rs.2557 lakh towards compensation. On 10th October 2008, the State Government sanctioned the valuation. The acquiring body i.e. MIDC paid the compensation amount as demanded by the SLAO on 27th December 2009. On 8th January 2010, the acquiring body paid remaining amount. It is also the case of the respondents that the respondents had issued notices to the petitioners to accept the amount of total compensation of Rs.3,30,61,039/-. The petitioners did not remain present in the office of the respondents for acceptance of the said amount of compensation on

6th June 2014. SLAO has thus deposited the said amount in the Civil Court, Jalna on 5th September 2014.

78. A perusal of the record further indicates that it is the case of the respondents that in the meeting held by the District Collector, rate of compensation for cultivated land to be acquired for the purpose of development by Jalna, MIDC (Phase-III) was discussed. A reference to the land bearing Gat Nos.21 and 22 was excluded. The said lands were adjacent to the road and rate for the same was to be agreed and determined later on. The Collector, Jalna had determined the rates on those lands of Rs.22,75,364/- per hector. State Government vide its letter dated 2nd February 2010 approved the said rate as determined for Gat Nos.21 and 22. High Power Committee of MIDC thereafter approved the said rate and accordingly the said rate was provided in the said award dated 22nd February 2010.

79. It is the case of the petitioners that this process unilaterally followed by the respondents for determining the rates was not in accordance with Section 33(2) and 33(3) of the said MID Act. It is the case of the petitioners that there was no agreement arrived at between the petitioners and State Government in respect of compensation payable to

the petitioners in respect of the lands under acquisition. It is the case of the petitioners that State Government was thus required to refer the case to the Collector under Section 33(3) of the said MID Act for determination of the amount of compensation to be paid for such acquisition. In support of this submission, learned counsel for the petitioners placed reliance on unreported judgment of this Court in the case of ***Bhagwan Shripati Bodke Vs. The Collector, Pune (supra)***. It is the case of the petitioners that the respondents could not produce any agreement between the petitioners and State Government determined the compensation by agreement.

80. We are inclined to accept the submission made by the learned counsel for the petitioners that the said award dated 2nd February 2010 was not a consent award. In our view, there is thus no substance in the submission of the learned counsel for the petitioners that the petitioners could not have made a reference under Section 18 of the Land Acquisition Act, 1894. There is no dispute about the proposition of law laid down by this Court in the judgment of this Court in the case of ***Kakaji S/o Appa Bagal (died LRs.) Vs. The State of Maharashtra & Ors. (supra)*** holding that if there is a consent award made under Section 18(2) of the Land Acquisition Act, 1894, the land owner is not entitled to

seek a reference under Section 18 of the Land Acquisition Act, 1894. In view of this Court holding that the said award dated 2nd February 2010 was not a consent award, reliance placed by the learned counsel for the petitioners on the judgment of this Court would not assist the case of the petitioners.

81. Division Bench of this Court in the case of ***Bhagwan Shripati Bodke Vs. The Collector, Pune (supra)***, after holding that there was no agreement between the land owners and the acquiring body to pay compensation under Section 33(2) of the said MID Act, have set aside the direction of the Sub-Divisional Officer and directed the State Government to refer the case to the Collector for determination of compensation in accordance with Section 33(3) of the said MID Act.

82. A perusal of the record clearly indicates that after the objection regarding compensation was filed by the petitioners on 18th October 2007, SLAO or the Collector did not give any personal hearing to the petitioners. In our view, under Section 33(3), where no such agreement can be reached between the parties under Section 33(2) of the said MID Act, State Government is bound to refer the case to the Collector for determination of the amount of compensation to be paid

for such acquisition as also the person or persons to whom such compensation shall be paid. Section 33(4) provides that before finally determining the amount of compensation, the Collector shall give an opportunity to every person to be compensated to state his case as to the amount of compensation.

83. It is the case of the respondents that the State Government, High Power Committee and Collector had discussed the compensation inter se and determined the compensation. It is thus clear that the Collector has not rendered any hearing to the petitioners before finally determining the amount of compensation. We are thus inclined to accept the submission made by the learned counsel for the petitioners that compensation determined by the Collector finally was without rendering an opportunity to the petitioners as contemplated under Section 33(4) of the said MID Act. We are thus inclined to accept the recourse adopted by the Division Bench of this Court in the case of ***Bhagwan Shripati Bodke Vs. The Collector, Pune (supra)*** and to direct the State Government to refer the case to the Collector for determining the compensation under Section 33(3) of the MID Act after giving an opportunity to the petitioners contemplated under Section 33(4) of the said MID Act.

84. In so far as the submission of the learned counsel for the petitioners that the respondents not having paid compensation to the petitioners and not having taken possession of the land within six months from the date of the alleged award and thus the provisions of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 and more particularly Section 24 stands attracted to the facts of this case and thus State Government will have to issue a fresh notification for acquisition of land and will have to pay market rate of the land in question is concerned, in our view, there is no merit in this submission of the learned counsel. The land in question was not acquired under the provisions of the Land Acquisition Act, 1894. The provision of Section 24 of the said LARR Act, 2013 would not apply to the land acquisition proceedings in question. Be that as it may, none of the conditions under Section 24 of the said Act are attracted in the facts of this case.

85. SLAO has already taken possession of the land in question from the petitioners and has already handed over possession of the land to the acquiring body who turn has handed over possession to the allottees. The acquiring body has also deposited the entire compensation with the SLAO. The SLAO has already deposited

compensation amount in Civil Court, Jalna in view of the petitioners not collecting the said compensation inspite of the notice received from the SLAO. The submission of the learned counsel for the petitioners that his client would be entitled to a fair compensation under Section 24 of the LARR Act, 2013 has thus no merit. The principles of the law laid down in the decision of the Division Bench of this Court at Aurangabad bench in the case of ***City and Industrial Development Corporation Vs. State of Maharashtra and others***, delivered on 6th October 2017 in Writ Petition No.6917 of 2004 and the decision of the Full Bench of this Court in the case of ***Mehtab Laiq Ahmed Shaikh and Anr. Vs. State of Maharashtra and Ors.***, delivered on 13th October 2017 in Writ Petition No.2827 of 2014 and other connected matters would squarely apply to the facts of this Court.

86. For the reasons recorded aforesaid, we are of the view that there is no merit in the writ petition in so far as the validity of the acquisition proceedings initiated by the respondents culminating into an award is concerned. The validity of the acquisition proceedings is thus upheld. However, we are inclined to direct the State Government to make a reference to the Collector under Section 33(3) of the said MID Act for the purpose of final determination of the amount of compensation

payable to the petitioners after rendering an opportunity to the petitioners.

87. We therefore pass the following order :-

- (i) The validity of the acquisition proceedings culminating into an award dated 2nd February 2010 is upheld.
- (ii) Amount of compensation finally determined by the respondents including the Collector without rendering an opportunity to the petitioners contemplated under Section 33(4) of the Maharashtra Industrial Development Act, 1961 is set aside.
- (iii) State Government shall refer the case to the Collector for determination of compensation in accordance with Sub-section (3) of Section 33 of the said MID Act, 1961.
- (iv) The amount deposited by the acquiring body before the Civil Court shall be subject to the further orders, as may be passed by the Collector for payment to the petitioners.
- (v) The Collector shall complete the exercise of determination of compensation in accordance with Section 33(5) as expeditiously as possible and preferably within six months from today.
- (vi) It is made clear that this Court has not made any adjudication on merits on the quantum of compensation.

(vii) Rule is partly made absolute in terms of the aforesaid terms.

There shall be no order as to costs.

(viii) All concerned parties to act on the authenticated copy of this order.

(SUNIL K. KOTWAL, J.)

(R.D. DHANUKA, J.)