IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 3564 OF 2013

M/s. Super Electrical and Engineering	}	Petitioner
versus		
The Collector, Pune and Ors.	}	Respondents

WITH
WRIT PETITION NO. 9620 OF 2012

M/s. Super Auto India Ltd.	}	Petitioner
versus		
The Collector, Pune and Ors.	}	Respondents

Mr. Tejas Deshmukh with Mr. Ritesh Kulkarni for the petitioners.

Mr. A. B. Vagyani-Government Pleader with Ms. M. P. Thakur-AGP for State.

Mr. G. S. Hegde with Mr. C. M. Lokesh and Ms. Jui Pandey ib. M/s. A. R. Bhole and Co. for respondent no. 2.

Mr. Avinash K. Jalisatgi with Mr. Amol B. Desai i/b. Mr. T. R. Yadav for respondent no. 6.

Ms. Kavita Shah for respondent no. 5.

CORAM :- DR. MANJULA CHELLUR, C.J. &
N.M.JAMDAR, J.
DATE :- JULY 11, 2017

P.C. :-

1. The petitioner in Writ Petition No. 3564 of 2013 being owner of Plot Nos. 181(part), 183(part) and 186(part) and the petitioner in Writ Petition No. 9620 of 2012 being the owner of Plot No. 184(part) situated at village Kharabwadi, Taluka Khed,

District Pune are before this court challenging the acquisition proceedings initiated under the Maharashtra Industrial Development Act, 1961. It is not in dispute that a notification under section 32(2) came to be issued on 16th October, 2009. Apparently, on 16th October, 2009, the State Government has issued notification, wherein compulsory acquisition of the land was declared. Section 33 of the Maharashtra Industrial Development Act, 1961 refers to determination of compensation. Under this provision, an option is open to the owner to agree for the quantum of compensation suggested by the State. In other words, the Land Acquisition Officer would sit across the table with the owner and by deliberation and conversation, they can arrive at a figure which could result in consent amount, wherein, the amount of compensation is determined by agreement between the parties. In the absence of such agreement between the parties, a procedure is laid down in sub-section (5) of section 33 of the Maharashtra Industrial Development Act, 1961. Sub-section (5) clearly says that so far as determination of compensation is concerned, the Collector shall be guided by the provisions contained in sections 23 and 24 and the relevant provisions of the Land Acquisition Act, 1894. In other words, the basis or the guidelines to determine compensation would be the guidelines indicated under the Land Acquisition Act, 1894.

2. By placing reliance on sub-section (10) of section 33 of the Maharashtra Industrial Development Act, 1961, read with Rule 27 of the Maharashtra Industrial Development Rules, 1962, the learned counsel appearing for the petitioners contends that in the light of the fact that no award came to be passed till date, in terms of section 24 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (Act 30 of 2013), the acquisition proceedings lapse. In other words, according to him, a reading of sub-section (10) of section 33 of the Maharashtra Industrial Development Act, 1961 and Rule 27 of the Maharashtra Industrial Development Rules, 1962 would clearly indicate that maximum period of two years is prescribed for determining the compensation and if it is not done so, then, the acquisition proceedings lapse.

3. On a perusal of the entire provisions of section 33, we have noted that as stated above, sub-section (6) onwards, it refers to determination of compensation. Where the parties have not agreed upon consent amount or have not agreed to any particular amount as compensation, a procedure is laid down up to sub-section (12) of section 33. Sub-section (10) of section 33 reads as under:-

> "33(10) The Collector shall dispose of every case referred to him under sub-section (3) for determination of compensation as expeditiously as possible and in any case within such time as may be prescribed by rules.

4. As already stated above, Rule 27 of the Maharashtra Industrial Development Rules, 1962 reads as under:-

> "**27. Time within which cases under Section 33(3) to be disposed of:**
> The Collector shall dispose of cases referred to him under sub-section (3) of Section 33 within one year from the date on which they are referred to him or not later than such further period not exceeding twelve months, as the State Government may, in any case or class of cases, allow"

5. So far as the first part of Rule 27 is concerned, it takes care of the intention of sub-section (10) of section 33 i.e. maximum period of one year is given to the Collector to dispose of a case referred to him for determination of compensation, where there was no agreement between the parties for compensation. The second part of the Rule says that not later than such further period not exceeding twelve months as the State Government may, in any case or class of cases, allow. According to the petitioner, even if two years' maximum period were to be taken from the date of issuance of notification under section 32(1) i.e. 25th May, 2011, the two years' time has lapsed by 2013. Therefore, the acquisition in question lapses in terms of sub-section (2) of section 24 of the Act 30 of 2013. Time and again, with reference to the Maharashtra Industrial Development Act,

1961 and other statutes, when the matters reach Apex Court, the Apex Court has said that the Industrial Development Act could be a Code on its own, which provides how acquisition has to be done under a particular enactment and the consequences of not passing an award, if such consequences are provided under the Act. Similar question came up for consideration in the case of *Special Land Acquisition Officer KIADB Mysore and Anr vs. Anasuya Bai (Dead) by Legal Representatives and Ors.*, **(2017) 3 SCC 313**, wherein, the contention before the Apex Court was that if an award was not passed within two years from the date of final notification under section 6 of the Land Acquisition Act, 1894, such award, if passed, will be *non-est* in the eyes of law and the land acquisition proceeding lapses under sub-section (2) of section 24 of the Act 30 of 2013. The question which came up for consideration was whether the provisions of the Act 30 of 2013 were applicable in the instant case when the land is acquired under the provisions of the Karnataka Industrial Area Development Act, 1966.

6. On a reading of the provisions i.e. sub-section (5) of section 33 of the Maharashtra Industrial Development Act, 1961, it is apparent that a reference is made to the Land Acquisition Act, 1894 so far as sections 24 and 27 are concerned, only for the

purpose of adopting a formula to determine compensation by the Collector, instead of a different formula under the Maharashtra Industrial Development Act, 1961, sub-section (5) says that the formula enumerated under sections 23 and 24 and other relevant provisions of the Land Acquisition Act, 1894 could be adopted for arriving at the quantum of compensation. By any stretch of imagination, one cannot say that it could be understood as every provision of the Land Acquisition Act, 1894 would be applicable to the Maharashtra Industrial Development Act, 1961 and the Rules, which only mandates that the Collector has to pass an award as expeditiously as possible i.e. within one year or within a further period of 12 months as the State Government may allow, depending upon the case or class of cases. This provides an obligation on the part of the Collector to complete the determination of quantum of compensation normally within one year, but under exceptional cases, within two years, as provided in the Rules. There is no mentioning of lapse of any proceedings positively either under the statute i.e. sub-section (10) of section 33 or under the Rules. In the absence of such provision, one cannot infer that if the determination of compensation, even in the exceptional cases, were to be made within two years, after two years, the proceedings would lapse. Our opinion is further strengthened by the provision of payment of interest vide section

38 of the Maharashtra Industrial Development Act, 1961, where, it says that if the amount of such compensation is not paid or deposited on or before taking possession of the land, the Government shall pay the amount of compensation determined with interest thereon at the rate of 4% from the time of taking possession until it shall have been paid or deposited. Such an embargo is foisted on the mechanism so that the Collector would determine the compensation within two years and it cannot be understood as lapsing of proceedings of acquisition.

7. Sub-Rule (2) of Rule 19 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (Maharashtra) Rules, 2014 reads as under:-

> "19(2) Any proceeding where a notification is published under Chapter VI of the Maharashtra Industrial Development Act, 1961 (III of 1962) before the 31st December 2013 and before that date an award for land acquisition has not been made under section 32 of the said Act, then the proceedings shall be continued as per the formula provided in sections 26 to 30 of the Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (30 of 2013).

8. A reading of the above sub-rule clearly indicates that so far as acquisitions under the Maharashtra Industrial Development Act, 1961 are concerned, with the amendment of the Land Acquisition Act and by virtue of the new Act 30 of 2013, compensation has to be determined in terms of formula provided

in sections 26 to 30 of the Act 30 of 2013. This Rule is to remove doubts as to where the new Act would be applicable while determining the compensation. With the amendment of the Land Acquisition Act, 1894, the Maharashtra Industrial Development Act, 1961 or other similar enactments are not amended, therefore, in order to remove confusion or doubts, a specific provision is made under sub-Rule (2) of Rule 19 that the formula provided under the new Land Acquisition Act, in terms of sections 26 to 30, would be applicable to the acquisitions under the Maharashtra Industrial Development Act, 1961.

9. Apparently, the sub-rule says that if the award is not passed on or before 31st December, 2013 in case of the land acquisition made under the Maharashtra Industrial Development Act, 1961, the formula applicable is in terms of sections 26 to 30 of the new Land Acquisition Act.

10. Apparently, no determination of compensation is arrived at till date. It is always open to the petitioners to bring to the notice of the Collector the formula to be adopted while determining the compensation.

11. Apparently, in the present case, there is no determination of compensation, which could be termed as an award, which came

to be made on or before 31st December, 2013. There is no amendment to the the Maharashtra Industrial Development Act, 1961 or the Rules made thereunder. By virtue of sub-rule (2) of Rule 19, where the formula provided in sections 26 to 30 of the Act 30 of 2013 could be extended to the determination of compensation under the Maharashtra Industrial Development Act, 1961 is an issue to be considered by the Collector concerned while determining the compensation. Without expressing any opinion whether it has to be determined in accordance with the formula under the new Act 30 of 2013, we dispose of the writ petition opining that the proceedings of acquisition initiated under the Maharashtra Industrial Development Act, 1961 are not lapsed. Therefore, further proceedings have to be taken to its logical end in accordance with the procedure contemplated.

12. We are not entering upon the question whether sub-Rule (2) of Rule 19 would be applicable or not. By virtue of section 32(1) notification as contemplated under sub-section (4) of section 32 of the Maharashtra Industrial Development Act, 1961, the land vests with the State free from all encumbrances. Therefore, question of lapse does not arise.

(N. M. JAMDAR, J.) **(CHIEF JUSTICE)**