

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION No. 11473 OF 2022

1. New Millenium India Property)
 Developers Private Limited)
 Unit No.907, Aston, Sundervan)
 Complex, Lokhandwala Road,)
 Andheri -W, Bandra Suburban,)
 Mumbai 400 053)
2. Mr. Nikhil Mathur)
 13/14, Neel Gagan, A-Wing, Four)
 Bungalows Junction, J.P. Road,)
 Versova, Andheri (West),)
 Mumbai - 400 053)
3. Mrs. Vandana Mathur)
 13/14, Neel Gagan, A-Wing, Four)
 Bungalows Junction, J.P. Road,)
 Versova, Andheri (West),)
 Mumbai - 400 053)...Petitioners

Versus

1. Maharashtra Industrial Development)
 Corporation, through its Chief)
 Executive Officer, MIDC, "Udyog)
 Sarathi", Marol Industrial Area,)
 Mahakali Caves Road, Andheri-East,)
 Mumbai - 400 093)
2. The District Collector, Raigad)

- District Collector Office,)
 Near Hirakot Lake, Tahasil-Alibaug,)
 District-Raigad, Maharashtra- 410021)
 3 Sub-Divisional Officer, Karjat)
 Hydro Colony, Near Karjat Panchayat)
 Samiti, Tahasil-Karjat, Dist. Raigar,)
 Maharashtra- 410 201)
 4. The State of Maharashtra)
 having its address at Industries,)
 Energy and Labour Department)
 Mantralaya, Mumbai through its)
 Secretary, Government of Maharashtra)
 5. Emerald Buildcon Pvt. Ltd.)
 A company incorporated under the)
 provisions of Companies Act, 1956,)
 having its registered office at:)
 404, Nirmal Tower, 26 Barkhamba)
 Road, New Delhi-110001)...Respondents

WITH
 INTERIM APPLICATION No. 2449 OF 2023
 IN
 WRIT PETITION No. 11473 OF 2022

1. Sanket Janardhan Bhase)
 Age 31 years, Occu. Business and)
 Agriculture, R/o. Dahivali,)
 Taluka- Karjat, Raigad)
 Dist. Maharashtra)

2. Abhishek Chandrakant Surve)
Age 31 years, Occu: Business and)
Agriculture, R/O Dahivali, Tal.Karjat)
Raigad District Maharashtra)
3. Harshad Nandkumar Vichare)
Age 39 years, Occu:Business and)
Agriculture, R/O Posari, Tal. Karjat)
Raigad, Dist. Maharashtra)
4. Santosh Babasaheb Dahiphale)
Age 31 years, Occu:Business)
And Agriculture, R/O. Avdhoot Plaza)
Taluka Dattawadi, Badlapur (East))
Maharashtra)...Applicants

In the matter between:

1. New Millenium India Property)
Developers Private Limited)
Unit No.907, Aston, Sundervan)
Complex, Lokhandwala Road,)
Andheri -W, Bandra Suburban,)
Mumbai 400 053)
2. Mr. Nikhil Mathur)
13/14, Neel Gagan, A-Wing, Four)
Bungalows Junction, J.P. Road,)
Versova, Andheri (West),)
Mumbai - 400 053)
3. Mrs. Vandana Mathur)
13/14, Neel Gagan, A-Wing, Four)

Bungalows Junction, J.P. Road,)
 Versova, Andheri (West),)
 Mumbai – 400 053)...Petitioners

Versus

1. Maharashtra Industrial Development)
 Corporation, through its Chief)
 Executive Officer, MIDC, “Udyog)
 Sarathi”, Marol Industrial Area,)
 Mahakali Caves Road, Andheri-East,)
 Mumbai – 400 093)
2. The District Collector, Raigad)
 District Collector Office,)
 Near Hirakot Lake, Tahasil-Alibaug,)
 District-Raigad, Maharashtra- 410021)
3. Sub-Divisional Officer, Karjat)
 Hydro Colony, Near Karjat Panchayat)
 Samiti, Tahasil-Karjat, Dist. Raigar,)
 Maharashtra- 410 201)
4. The State of Maharashtra)
 having its address at Industries,)
 Energy and Labour Department)
 Mantralaya, Mumbai through its)
 Secretary, Government of Maharashtra)
5. Emerald Buildcon Pvt. Ltd.)
 A company incorporated under the)
 provisions of Companies Act, 1956,)
 having its registered office at:)
 404, Nirmal Tower, 26 Barkhamba)

Road, New Delhi- 110001

)...Respondents

WITH

CONTEMPT PETITION No. 682 OF 2022

1. New Millenium India Property)
Developers Private Limited)
Unit No.907, Aston, Sundervan)
Complex, Lokhandwala Road,)
Andheri -W, Bandra Suburban,)
Mumbai 400 053)
2. Mr. Nikhil Mathur)
13/14, Neel Gagan, A-Wing, Four)
Bungalows Junction, J.P. Road,)
Versova, Andheri (West),)
Mumbai - 400 053)
3. Mrs. Vandana Mathur)
13/14, Neel Gagan, A-Wing, Four)
Bungalows Junction, J.P. Road,)
Versova, Andheri (West),)
Mumbai - 400 053)...Petitioners

Versus

1. Dr. P. Anbalagan)
Chief Executive Officer,)
Maharashtra Industrial Development)
Corporation,)
having his office at MIDC,)
“Udyog Sarathi”, Marol Industrial Area)
Mahakali Caves Road, Andheri- East)

- Mumbai - 400 093)
 and Also at No. 4 & 4(A), 12th Floor,)
 World Trade Centre Complex,)
 Cuffe Parade, Colaba, Mumbai-400005)
2. Dr. Mahendra Kalyankar)
 The District Collector, Raigad)
 District Collector Office)
 Near Hirakot Lake, Tahasil -Alibaug)
 Dist. Raigad, Maharashtra-4102021)
3. Mr. Ajit Nairale)
 Sub-Divisional Officer, Karjat)
 Hydro Colony, Near Karjat Panchayat)
 Samiti, Tahasil-Karjat, Dist. Raigad)
 Maharashtra - 410 201)
4. The State of Maharashtra)
 having its address at)
 Industries, Energy and Labour)
 Department)
 Mantralaya, Mumbai through its)
 Secretary, Government of Maharashtra)...Contemnors/
 Respondents
5. Emerald Buildcon Pvt. Ltd.)
 A company incorporated under the)
 Provisions of Companies Act, 1956,)
 having its registered office at:)
 404, Nirmal Tower, 26, Barkhamba)
 Road, New Delhi- 110001)...Proforma
 Respondent

**Mr. Rahul Narichania, Senior Advocate i/by Mr. Pranav Thackur,
Advocate for the Petitioners**

**Mr. Y.S. Jahagirdar- Senior Advocate a/w. Ms. Vishakha Sane
a/w.Mr. Rohit Dangre i/by Mr. Jayesh Joshi Advocate for the
Applicants in IA/2449/2023**

**Mr. Anil Y. Sakhare, Senior Advocate a/w. Ms. Shyamali Gadre a/w.
Ms. Harshita Bhanushali i/by Little & Co. for Respondent No.1
M.I.D.C. in WP/11473/2022 and CP/682/2022**

Ms. M.S. Bane-AGP for Respondent Nos.2,3 and 4- State.

**Ms. Ayushi Anandpara a/w. Mr. Dhiren Durante a/w. Mr. Sahil
Namavati i/by Lexicon law Partners for Respondent No.5 in CP and
WP.**

**CORAM:- R.D. DHANUKA &
GAURI GODSE, JJ.**

**RESERVED ON : 20 MARCH, 2023
PRONOUNCED ON :11 APRIL, 2023**

JUDGMENT [PER R.D. DHANUKA J.]

1. Rule. Mr. Sakhare, Learned Senior Counsel waives service on behalf of Respondent No.1. Ms. M.S. Bane, learned AGP waives service on behalf of Respondent Nos.2, 3 and 4. Ms. Ayushi Anandpara, learned counsel waives service on

behalf of Respondent No.5. Rule is made returnable forthwith. By consent of parties, both the proceedings were heard finally and are being disposed of by a common order.

2. Some of the relevant facts for deciding both the Petitions are as under.

3. It is the case of the Petitioners that pursuant to Agreement dated 26 December, 2006, between the Petitioners and the Emerald Buildcon Pvt. Ltd., the said Emerald Buildcon Pvt. Ltd. were to acquire 1300 acres of land situated in Taluka Khalapur, Dist. Raigad, Maharashtra for implementation of the project as described in the said Agreement. Under the said Agreement i.e. Emerald Buildcon Pvt. Ltd., i.e. Respondent No.5 advanced aggregate sum of Rs. 41,38,23,000/- to Petitioner No.1.

4. On 27 August, 2014, the State Government issued a Notification determining compensation, rehabilitation and resettlement package under Section 107 of the Right to Fair Compensation and Transparency in Land Acquisition,

Rehabilitation and Resettlement Act, 2013 (for short “Fair Compensation Act”).

5. On 28 April, 2019, Section 33 of the Maharashtra Industrial Development Act, (for short “MID Act”) is substituted to include the Fair Compensation Act, wherein the determination of compensation is as per the provisions of the Fair Compensation Act.

6. On 2 September, 2020, Respondent No.5 filed a Commercial Arbitration Petition (L) No. 1610 of 2018 under Section 9 of the Arbitration and Conciliation Act, 1996 seeking interim reliefs pending arbitral proceedings pertaining to disputes and differences between the parties to Agreement dated 26 December, 2006. By an order dated 20 December, 2020, this Court rejected the said petition filed by Respondent No.5, keeping all contentions of the parties on merits open.

7. **Petitioners agreed to transfer** approximately 115 acres of land to Respondent No.5. The Petitioners

retained approximately 81 acres of land and transferred approximately 60 acres of land to the other parties. These retained lands, transferred lands and other lands were acquired under the provisions of the said MID Act for industrial purpose.

8. It is the case of the Petitioners that on 24 December, 2020, the Chief Manager of Respondent No.1 addressed a letter to the Sub-Divisional Officer, Karjat stating that approval for issuing notification under Section 32(1) under MID Act was granted by the State government vide letter dated 23 October, 2020 and, therefore Respondent No.1 forwarded the documents submitted by the Petitioners to Respondent No.3 for further proceedings.

9. Final Notification under Section 32(1) of the MID Act was published for the acquired lands which included the retained lands, transferred lands and other lands on 26 November, 2020.

10. On 17 February, 2021, a meeting of the High Power

Committee came to be held, whereby High Power Committee approved the rate of compensation payable for land admeasuring 559.607 H.A. lying and situate in villages Nandpada, Gothivali, Gohe, Karambeli, Kharivali and Chiltan of Khalapur Industrial Area, Phase III at Rs.55,00,000/- per Acre i.e. Rs.1,37,00,000/- per Hectare.

11. By letter dated 1 March, 2021, the Under Secretary, Government of Maharashtra addressed a letter to the Chief Executive Officer, MIDC and called upon the MIDC to take necessary action in accordance with the Minutes of the Meeting dated 23 February, 2021. On 22 March, 2021, the MIDC- Respondent No.1 forwarded the documents submitted by the Petitioners to the Sub-Divisional Officer, wherein reference to Application of the Petitioners dated 3 December, 2020 was made.

12. On 5 May, 2021, the Petitioners and Respondent No.5 filed Consent Terms in Commercial Arbitration Petition (L) No. 2735 of 2020 filed by Respondent No.5 against the Petitioners. The parties settled the dispute. This Court

disposed of the said Commercial Arbitration Petition in terms of the Consent Terms. Consent Terms were between the Petitioners, Respondent No.5 and its nominees i.e. Goldshine Apartment Pvt. Ltd., Mr. Atul Jain, Mr. Paras Jain and Mr. Sharat Jain.

13. Under the said Consent Terms, the Petitioners agreed to pay Respondent No.5 and its nominees a sum of Rs.62,50,00,000/- as 'Settlement Amount", on the terms and conditions described under the Consent Terms within a period of eight months from the date of execution of the Consent Terms.

14. By a letter dated 29 June, 2021, the decision of High Power Committee taken in its meeting dated 30 March, 2021, approving the rate of compensation payable at Rs.55,00,000/- per acre was conveyed by Under Secretary, State of Maharashtra to Chief Executive Officer of Respondent No.1 MIDC.

15. On 2 December, 2021, the Petitioners addressed a

letter to the Respondents calling upon them to take immediate steps as per due process of law to enable the Petitioners to comply with the order dated 5 May, 2021 passed by this Court in the Commercial Arbitration Petition and to make payment of compensation and pass a formal award to that effect. The said letter dated 2 December, 2021 was followed by reminder letter sent by Petitioners to Respondent Nos. 1 and 3 seeking immediate payment of the compensation amounts pertaining to the acquired lands.

16. On 3 January, 2022, the Petitioners sent another reminder to Respondent Nos.1 and 3 requesting them to expedite the disbursement of the compensation amount. On 23 February, 2022, Respondent No.3 addressed a letter to the Petitioners, inter alia, informing that the final notification under Section 32(1) of the MID Act has been issued in respect of the certain gaonthans i.e. Nandpada, Gothivali, Karambeli, Gohe, Swali and Narangi etc. The Petitioners were informed that the High Power Committee had consented for a rate for compensation. The acquiring body however did not deposit the compensation with the Sub-Divisional Officer.

17. The Petitioners were informed that upon receipt of the compensation amount and excluding the land of Village Gohe which came under Eco-Sensitive Zone, the amount of compensation shall be released for the area of the said 5 villages acquired pursuant to the notification under Section 32(1) of MID Act as per directions of this Court.

18. The Petitioners, therefore, filed a Writ Petition bearing No. 3119 of 2022 in this Court for writ of mandamus, directing Respondent Nos. 1 to 4 to take physical possession of the acquired lands which include Retained Lands admeasuring approximately 81 acres, Transferred Lands admeasuring approximately 115 acres, and Other Lands admeasuring approximately 60 acres, and pass a formal award under the MID Act to make payment of compensation already decided by the High Power Committee to the Petitioners.

19. On 8 April, 2022 the Division Bench of this Court disposed of the said Writ Petition No. 3119 of 2022. This

Court recorded the stand taken by Respondent No.1 MIDC that unless the demand is made by the Special Land Acquisition Officer and the possession of the land is received, amount of compensation cannot be deposited. This Court also took cognizance of the Consent Terms arrived between the Petitioners and Respondent No.5 before Learned Single Judge of this Court.

20. This Court recorded the statement made by the Learned Senior Counsel for the Petitioners that the Petitioners were ready to deliver possession of the acquired lands at any point of time. The Learned AGP for the State made a statement that the demand had been made upon the Respondent No.1 MIDC for the amount of compensation. Learned counsel for the MIDC made a statement that within four weeks from the date of possession is received, amount of compensation would be paid. This Court recorded the statement as an undertaking given to this Court.

21. This Court accordingly directed the Petitioners to start delivering possession of the acquired land to the

concerned Special Land Acquisition Officer from 11 and 12 April, 2022 and directed the Special Land Acquisition Officer in turn to hand over possession to the acquiring body (MIDC). The MIDC was directed to deposit the amount as per the demand with the Sub-Divisional Officer within four weeks and also directed to the Sub-Divisional Officer to deposit the amount with the Prothonotary and Senior Master of this Court within one week from the date of receipt of the said compensation amount from the MIDC. This Court permitted the Respondent No.5 to withdraw the said amount in terms of the consent terms dated 5 May, 2021 passed by the learned Single Judge under Commercial Arbitration Petition (L) No. 2735 of 2020.

22. This Court made it clear that after the entire amount is deposited, the parties would make an application for withdrawal. This Court recorded the statement made by the learned Senior Counsel for the Petitioners that if Respondent No.5 makes an application for withdrawal of the amount of Rs.62.5 crores, Petitioners would give no objection to the same.

23. It is the case of the Petitioners that on 18 April, 2022, the Petitioners handed over the requisite documents and consent letters to the Sub-Divisional Officer for land admeasuring 38.8525 Acres owned by Respondent No.5. On 20 April, 2022, the Petitioners handed over requisite documents and consent letters to the Sub-Divisional Officer for land 3.325 Acre owned by the Petitioners and handed over requisite documents to the Sub-Divisional officer for land admeasuring 137.2145 Acre owned by third parties on 20 April, 2022 and 26 April, 2022.

24. Respondent No.1 by letters dated 4 May, 2022 and 11 May, 2022 addressed to the Sub-Divisional Officer raised an issue that the lands in question were not contiguous lands and also raised dispute in respect of title. On 19 May, 2022 and 25 May, 2022, the Sub-Divisional Officer addressed letters to Respondent No.1 -MIDC stating that on scrutiny of documents, majority of lands and title of lands are found disputed. On 30 May, 2022, Respondent No.1- MIDC addressed a letter to the Sub-Divisional Officer asking them to

call upon the Petitioners to submit requisite documents and consent letter and to take physical possession of the acquired lands. On 30 May, 2022 the Petitioners once again requested the Sub-Divisional Officer to take physical possession of the acquired land.

25. On 7 June, 2022, the Sub-Divisional Officer addressed a letter to the Petitioners pointing out the objections received from local farmers from that area. On 10 June, 2022, the Petitioners through their Advocate issued notice to the Respondent No.1 MIDC and Sub-Divisional Officer respectively highlighting efforts taken by Petitioners and calling upon them to comply with the order dated 8 April, 2022 passed by this Court in Writ Petition No.3119 of 2022.

26. On 22 June, 2022, the Petitioners filed Interim Application bearing IA No. 10159 of 2022, inter alia, praying for an order directing against the Sub-Divisional Officer to the issue notice under Section 32(5) of the MID Act to take physical possession of the land and to forthwith pass an award under Section 33 of the MID Act and in the meanwhile,

issue direction to the MIDC to make pro-term payment of compensation by depositing the same in the court.

27. On 14 July, 2022, the learned counsel for the MIDC made a statement that his client has no objection to deposit the compensation of the land in question, if the award is made by Special Land Acquisition Officer and possession of acquired land is handed over to MIDC. This Court accepted the said statement. The AGP sought time to take instructions as to when Award would be made by the Special Land Acquisition Officer and as to when the possession of the lands will be taken over by the Special Land Acquisition Officer from the Petitioners and would be handed over to MIDC.

28. On 20 July, 2022, this Court recorded the statement made by the learned counsel for the Petitioners that his client is ready and willing to hand over the possession and had offered possession, in the past also. Learned counsel for Respondent No.1-MIDC made a statement that till the award is made by the Special Land Acquisition Officer and possession is handed over to the MIDC, MIDC is not required

to pay any amount to Special Land Acquisition Officer.

29. Learned AGP on behalf of the State relied upon a Government Resolution dated 14 June, 2001 issued under the provisions of the Land Acquisitions Act, 1894 stating that 25% of the amount, if not deposited, the Award would not be made. This Court directed the Special Land Acquisition Officer to quantify the amount payable on the land in question and communicate the same to the learned counsel for the Petitioners as well as to the MIDC. On 21 July, 2022, the Sub-Divisional Officer, Karjat addressed a letter stating that 63.232 Hectares equivalent to 156 Acres belonging to Petitioner No.1 were acquired for which the payment of compensation would be Rs. 86,94,40,000/-

30. On 22 July, 2022, this Court passed an order in Interim Application No. 10159 of 2022 directing the Special Land Acquisition Officer to publish Award on or before 26 July, 2022 at 5.00 p.m. and directed the MIDC to deposit Rs.86,94,40,000/- within a week from the date of receipt of the copy of the Award.

31. On 26 July, 2022, the Petitioners submitted consents/sanmati patras to the Sub-Divisional Officer and handed over the physical possession of the entire land. It is the case of the Petitioners that the Petitioner submitted sanamti patras to the Sub-Divisional Officer and later by email on 26 July, 2022 and Sub-Divisional Officer in purported compliance with the order of this Court dated 22 July, 2022 made an Award as per Section 33(2) of the MID Act only for 16.871 Hectares and not for whole 63.232 Hectares. On 27 July, 2022, the Sub-Divisional Officer served upon the a copy of the Award upon the learned counsel for the Petitioners.

32. On 27 July, 2022, learned counsel for the Petitioners requested the Sub-Divisional Officer to immediately comply with the order as Award under Section 33(2) for holding 16.871 hectares was passed, whereas this Court had directed the Sub-Divisional Officer to pass Award for 63.232 hectares. It is the case of the Petitioners that award under Section 33(2) was incorrect and same should have been under Section 33(3) of the MID Act. On 3 August,

2022, Writ Petition No. 3119/2022 as well as Interim Application came to be disposed of.

33. On 5 August, 2022, the learned counsel for the Petitioners moved a Praecipe seeking further direction against inaction or partial modification in the order passed on 22 July, 2022 and for speaking to the minutes. On 10 August, 2022, this Court passed an order clarifying that an inadvertent error regarding physical possession of the land was made. The Petitioners had corrected the statement made before this Court that Petitioners were not to hand over vacant possession of the land in question but to handover the possession on 'as is where is basis' to the Special Land Acquisition Officer.

34. This Court noted that the award was passed under Section 33(2) and not under Section 33(3) of the MID Act, despite there being no agreement between the Sub-Divisional Officer and the Petitioners. On 18 August, 2022, this Court once again passed an order for speaking to the minutes of order dated 10 August, 2022 modified by order dated 18

August, 2022. This Court corrected the word 'contentious' by substituting it with word 'contiguous' and in paragraph 6, Section mentioned as 33(1) to be read as 33(2).

35. On 25 August, 2022, the Petitioners addressed two letters to the Sub-Divisional Officer and to the Advocates for the Respondent No.1- MIDC, calling upon them to comply with the order passed by this Court and to pass Award for the remaining lands and rectify the award dated 26 July, 2022 under Section 33(3) of the MID Act.

36. On 29 August, 2022, the Petitioners filed Interim Application No. 21513 of 2022 seeking direction and order from this Court that Sub-Divisional Officer to pass an award in accordance with Section 33(3) of the MID Act in respect of the remaining 49.349 hectares and to rectify award dated 26 July, 2022 and direct MIDC to pay Rs.86,94,40,000/- in respect of entire area as computed by Sub-Divisional Officer by its letter dated 21 July, 2022.

37. On 19 September, 2022, the Petitioners filed Writ

Petition No. 11473 of 2022 for an order and direction against the Respondent No.3 to pass an award in accordance with Section 33(3) of the MID Act in respect of the balance portion of 49.349 hectares and for other reliefs. On 26 September, 2022, the Petitioners filed Contempt Petition No. 682/2022, inter alia, praying for a punishment against the contemnors i.e. the Chief Executive Officer of MIDC, The District Collector, Raigad, Sub-Divisional Officer, Karjat and the State of Maharashtra for committing alleged contempt of Court by willful disobedience of the orders dated 8 April, 2022 passed in WP No. 3119 of 2022 and 22 July, 2022, 10 August, 2022 and 18 August, 2022 passed in IA No. 10159 of 2022.

38. The said contempt petition appeared on board on 28 November, 2022, when the learned Senior Counsel for the MIDC made a statement that a Special Leave Petition has been filed by the MIDC bearing Special Leave Petition (Civil) Diary No.(s). 36924/2022 and would be listed on 2 December, 2022. This Court accordingly adjourned the matter to 7 December, 2022. The Hon'ble Supreme Court adjourned the matter on 2 December, 2022. This Court accordingly directed

the contempt petition to be placed on board on 14 December, 2022. The matter was further adjourned to 20 December, 2022.

39. On 22 December, 2022, the parties tendered a copy of the order dated 15 December, 2022 passed by the Supreme Court in Special Leave Petition (Civil) Diary No(s). 36924/2022 directing Respondent No.1 MIDC to deposit Rs. 23,19 crores which is proportionate to 16.87 hectares of land regarding the award stated to have been made in compliance with the order passed by this Court on 2 July, 2022. The learned Senior Counsel for the Petitioners and the learned counsel for the Respondent No.3 made a request for amount of Rs. 23.19 crores directed to be deposited by the Supreme Court and have been allowed to be withdrawn in view of the direction issued by this Court in Contempt Petition, paragraph 4 of the order dated 22 July, 2022, granting liberty to Respondent No.5.

40. Since this Court noticed that the Supreme Court has not granted any such liberty to withdraw the said amount

that was directed to be deposited by MIDC, this Court did not allow the Petitioners or Respondent No.5 to withdraw the said amount at this stage and granted liberty to Respondent No.5 to apply for withdrawal before the Hon'ble Supreme Court, if so advised. On 17 February, 2023, this Court accordingly decided to hear the matter finally.

41. On 10 March, 2023, the matter was partly heard. This Court was informed by the parties that the MIDC has already deposited the amount pursuant to the interim order passed by this Court in respect of the land admeasuring 16.871 hectares out of 63.232 hectares. The said amount was not disputed by Respondent No.5. This Court accordingly directed that if the possession of the land admeasuring 16.871 hectares is not handed over by the Petitioners to the MIDC, the same shall be handed over within one week from the date of the said order.

42. The Petitioners accordingly handed over the possession of the land admeasuring 16.871 hectares to the Sub-Divisional Officer. By the said order, this Court dismissed

the contempt petition insofar as Respondent No.1 is concerned, in view of the order passed by the Supreme Court on 8 February, 2023. in SLP No. 23802-23805/2022 and made is clear that the Contempt Petition would be considered along with Writ Petition insofar as other Respondents are concerned.

43. Mr. Narichania, learned Senior Counsel for the Petitioners invited our attention to various documents annexed to the Writ Petition, Contempt Petition and also to various interim orders passed by this Court in the Writ Petition filed by the Petitioners in Writ Petition No. 3119 of 2022 and also in Writ Petition No. 11473/2022 and Contempt Petition No. 682/2022. It is submitted that this Court had already acknowledged in the order dated 30 March, 2022 that the MIDC did not dispute its liability to make payment but had only contended that the Sub-Divisional Officer had not yet issued the demand, and thus payment could not be released in respect of the land under acquisition. This Court had accordingly granted time to Learned AGP for Respondent Nos. 2 to 4 to take instructions from Sub-Divisional Officer

about the demand to be made upon Respondent No.1

44. It is submitted that similarly by order dated 8 April, 2022, this Court had directed the Sub-Divisional Officer to pass formal award and to take possession of the land and also directed the MIDC to make payment of compensation already decided by the High Power Committee to the Petitioners within four weeks after handing over possession. He directly placed reliance on the order dated 22 July, 2022 directing the Sub-Divisional Officer to publish Award on or before 26 July, 2022 and directed the MIDC to deposit Rs.86,94,40,000/- within one week from the date of receipt of a copy of the award. It is submitted that both these orders had attained finality. The MIDC never raised dispute about the title in respect of the writ property before the Court earlier.

45. It is submitted that since notification under Section 32(2) was already issued and published prior to issuance of notification under Section 32 (4) in the Official Gazette , the land had already vested in the State Government free from all encumbrances and neither Sub-Divisional Officer nor the

MIDC could raise an issue of title and thus could not have refused to pay compensation in respect of the land under acquisition. He submitted that even after publishing the notification under Section 32(1), the MIDC or Sub-Divisional Officer did not raise any question or queries in respect of the dispute in title of the land pertaining to the Petitioners and Respondent No.5. He submitted that only after having been satisfied and after considering the objections, the State Government had issued final notification under Section 32(1) of the MID Act. The writ property accordingly stood acquired by the State Government.

46. Learned Senior Counsel for the Petitioners invited our attention to clause 3 of the Award dated 3 August, 2022 and submitted that even according to the Award, a joint measurement of the area under the present award has been done on 5 November, 2019 and 13 November, 2019 to 19 November, 2019 by the Deputy Registrar, Land Records, Khalapur. No complaint has been received during the said joint measurement. He submitted that personal hearing was conducted on 23 December, 2019 and 30 December, 2019 and

thereafter a report had been sent to the Corporation on 2 June, 2020 along with the feedback of the Sub-Divisional Officer.

47. Learned Senior Counsel placed reliance on the order passed by this Court on 5 May, 2021 in Commercial Arbitration Petition No. 359 of 2021 whereby the said Petition was disposed of in terms of the Consent Terms and submitted that by the said order, this Court had directed the Authorities viz. Respondent No.1 MIDC and Respondent No.3 Sub-Divisional Officer- Karjat to comply with the terms and to act on the basis of the order passed by this Court. He submitted that the Sub-Divisional Officer and the Respondent No.1 MIDC never objected to the orders passed by this Court in the said Commercial Arbitration Petition No.359/2021.

48. Learned Senior Counsel placed reliance on various clauses of the Consent Terms entered into between Petitioners and Respondent No.5 in the said Commercial Arbitration Petition and submitted that the Petitioners were permitted to take necessary steps to ensure that MIDC or Sub-Divisional

Officer or any other officer, as the case may be, directly deposit the compensation amount payable for the acquisition of lands mentioned in Annexure "E" hereto with the Prothonotary & Senior Master of this Court until such time as the entire settlement amount is paid by Respondent No.5. It is submitted that the Intervenor also agreed and confirmed that they have no objection if the compensation amounts payable by the Sub-Divisional Officer, Karjat for the acquisition of lands of 60 acres mentioned in Annexure 'F' to the Consent Terms would be deposited by the concerned paying authority directly with the Prothonotary and Senior Master of this Court, who in turn would deposit the entire amount in a fixed deposit with a nationalized bank. The Intervenor also filed an affidavit before this Court recording and confirming the consent terms between the Petitioners and Respondent No.5.

49. It is submitted by the Learned Senior Counsel that the Respondent No.1 MIDC and Sub-Divisional Officer cannot be allowed to raise an issue regarding title by relying upon Index II of Sale Deed between the Intervenor and four persons

Mr. Sanket Janardhan Bhase, Mr. Abhishek Chandrakant Surve, Mr. Harshad Nandkumar Vichare and Mr. Santosh Babasaheb Dahifale as those persons had admitted in the affidavit annexed at Exhibit 'F-1' that they have no objection if the compensation amount, when payable by MIDC or any other authority to them towards the compulsory acquisition of the lands mentioned above is deposited by MIDC or any other authority directly with the Learned Prothonotary & Senior Master, High Court, Bombay and that the amount shall remain deposited in this Court till such time the payment of Rs.62,50,000/- payable to Respondent No.5. He submitted that the Intervenor has on locus to intervene in this Petition. If they have any cause of action, they are required to file an independent proceeding for impugning the order dated 5 May, 2021.

50. Insofar as Agreement entered into between the Petitioners and Intervener is concerned, it is vehemently urged by the learned Senior Counsel for the Petitioners that the intervenor has not paid any single penny towards consideration to the Petitioners and falsely alleged that they

purchased the land for valuable consideration.

51. Learned Senior Counsel for the Petitioners also placed reliance on the letter dated 25 February, 2022 addressed by the Sub-Divisional Officer whereby he agreed and informed the Petitioners that the final Notification under Section 32(1) had been published and once the amount for compensation was received from the MIDC, for whom the acquisition had taken place, the same would be disbursed to the Petitioners.

52. Learned Senior Counsel also placed reliance upon the order dated 30 March, 2022 passed by this Court recording the statement made by the MIDC that it does not dispute its liability to make the payment, but submitted that compensation had not been paid only because the Sub-Divisional Officer had not issued the demand and as a result thereof the payment could not be made by the MIDC. It is submitted by the learned Senior Counsel that the Sub-Divisional Officer did not produce any proof of any claim claimed by any other claimant in respect of right, title and

interest in the writ property. The 7/12 extract produced by the Sub-Divisional Officer cannot be considered as a proof of title.

53. It is submitted that though this Court had passed an order directing the Sub-Divisional Officer to pass an award for an area admeasuring 63.232 hectares, the Sub-Divisional Officer has wilfully disobeyed the said order and has passed an Award only for 16.871 hectares to the tune of Rs. 23,19,76,250/-. He submitted that the Contempt Petition against Respondent Nos. 2 to 5 are made absolute and those Respondents be punished under the provisions of the Contempt of Courts Act, 1971 read with Article 215 of the Constitution of India. Learned Senior Counsel tendered a list of survey numbers without any remarks of the Sub-Divisional Officer as per the affidavit of Sub-Divisional Officer dated 23 February, 2023 and submitted that though there was no remark made by the Sub-Divisional Officer, the Award was not passed in respect of those lands.

54. It is submitted by the learned Senior Counsel that though the Sub-Divisional Officer temporarily made an award

for a portion of land under acquisition and the MIDC has released the substantial amount in respect of that portion of the land forming part of the award, Respondent No.1 MIDC and Sub-Divisional Officer have raised a frivolous plea of dispute of title in respect of the entire land for which no award is made. He submitted that the Sub-Divisional Officer or the MIDC could not have raised any dispute about title for any portion of land under acquisition or that the land must be contiguous.

55. It is submitted that defence raised by the MIDC is contrary to the provisions of MID Act. He submitted that compensation was paid by the MIDC in respect of portion of land that was not contiguous land. The remaining portion of the land is also not a contiguous land. Though various documents were submitted by the Petitioners to the Sub-Divisional Officer, no comments were passed by the Sub-Divisional Officer on the documents or award. The Sub-Divisional Officer relied upon some other third party documents without giving an opportunity to the Petitioner. He submitted that Sub-Divisional Officer ought to have made an

award about the entire land under acquisition.

56. It is submitted that the Intervenor has claimed about 24 hectares of land on the basis of 7/12 extract regarding their claims, which is disputed by the Petitioners. He submitted that any event, the Sub-Divisional Officer ought to have made partial award in respect of the land admeasuring 63.232 hectares which are claimed by the intervenors along with first award made by the Sub-Divisional Officer.

57. Learned Senior Counsel invited our attention to the Affidavit filed by the Intervenor. He submitted that the Sub-Divisional Officer cannot take advantage of the transaction between the Petitioners and the Intervenor and could not have refused to make an award on the ground that there is a dispute about title on the writ property. He placed reliance on Sections 36(1) and 36(3) of the MID Act and submitted that even if there is any dispute between the Petitioners and the intervenors, the Sub-Divisional Officer has to deposit the amount of compensation in Court.

58. Learned Senior Counsel submitted that even if the

payment would have been made to the Petitioners by the MIDC in respect of a writ property, the Petitioners were liable to pay the amount to the persons entitled for which the MIDC had no say. Learned Senior Counsel tendered a copy of the circular dated 17 January, 2008 and submitted that the Respondents have committed breach of the said circular . He submitted the possession receipt is in respect of land admeasuring 2.350 Hectare and 14.521 Hectare. It is submitted that the Sub-Divisional Officer be directed to make an Award for the balance portion of land even if there is any title dispute as canvassed by the Sub-Divisional Officer and MIDC.

59. Mr. Sakhare, Learned Senior Counsel for the MIDC invited our attention to the Affidavit in Support of Interim Application filed by the Intervenors and more particularly, paragraph 9 and submitted that the averments made by the Intervenors clearly show that there is a title dispute in respect of the writ property. He also invited our attention to the averments made by the Petitioners in paragraph 14 of the writ petition and submitted that even the averments made by

the Petitioners would indicate that there is a title dispute between the Petitioners and the Intervenors in respect of the writ property. He relied upon Section 32(1) to 32(4), Sections 33,34,35, 36(3), 37 and 38 of MID Act.

60. It is submitted that Section 34 of the MID Act provides that an appeal is maintainable against the decision taken by the Sub-Divisional Officer before the Appellate Authority which ought to have been filed within 60 days from the date of the service of the copy of the Award passed by the Sub-Divisional Officer. He submitted that the dispute as to the apportionment within the Petitioner and the Intervenors, also can be adjudicated upon under Section 35 by making a Reference of dispute to the Authority.

61. Insofar as the order passed by the Learned Single Judge of this Court in Commercial Arbitration Petition filed by Respondent No.5, in which an order of deposit in Court came to be made, is concerned, it is submitted that the MIDC or the Sub-Divisional Officer are not party to the said Commercial Arbitration Petition and thus the said order of deposit in Court, cannot be relied upon in support of the plea

that MIDC shall be directed in this case to deposit the amount of compensation in this Court in respect of balance writ property.

62. It is submitted by Learned Senior Counsel that the Petitioners had suggested the amount of compensation to the MIDC for payment of compensation to the Petitioners. There was negotiation between the parties and only thereafter the amount was paid by the Sub-Divisional Officer under Section 33(2) of the MID Act. No award thus can be made in respect of the balance land under Section 33(3) of the MID Act as sought to be canvassed by the Petitioners.

63. Learned AGP for the State relied upon the Affidavit in Reply dated 3 August, 2022 filed by Shri Ajit Nairale, Sub-Divisional Magistrate, Karjat-Khalapur Sub Division, Karjat, and submitted that the area admeasuring 16.871 Hector which was acquired by consent of the Petitioners was not 'contiguous land'. This fact was conveyed to the Regional Officer, MIDC, Panvel by the Special Land Acquisition Officer on 25 May, 2022. She submitted that the said Award in respect of 16.871 hectors was based on a clear title and the

consent given by the Petitioners and so far as balance land admeasuring 46.361 hectares equivalent to 115.90 Acres, award cannot be declared as the Petitioner does not have clear title.

64. It is submitted there are several disputes regarding ownership of land pending before Revenue Authorities. There are various objections to the payment of compensation to the Petitioners and their objections should be considered as per due procedure under the law. She submitted that the Sub-Divisional Officer must follow the rules and procedure prescribed under Section 32(5) and 33(2) of the MID Act for the Award. She submitted that Award cannot be passed as no land owner other than the Petitioners have given their consent in respect of the lands that are part of the Petition. The learned AGP also placed reliance on Affidavit dated 8 November, 2022 filed by the Sub-Divisional Officer raising similar issues.

65. Learned counsel for Respondent No.5 relied upon the Consent Terms filed by the Petitioners and the Respondent No.5 and submitted that the liabilities of the

Petitioners towards Respondent No.5 were crystalized by the consent terms dated 5 May, 2021 and order passed by this Court in Commercial Arbitration Petition, taking the consent terms on record for recovery of the balance compensation amount from the Sub-Divisional Officer by the MIDC. She submitted that her client has already filed Execution Application for recovery of the balance amount under the said Consent Terms.

66. Mr. Y.S. Jahagirdar, Learned Senior Counsel for the Applicant in Interim Application No. 2449 of 2023 submitted that his clients have purchased the land admeasuring about 60 acres out of total writ property for lawful consideration from the Petitioners and have paid such consideration to the Petitioners. They relied upon the Agreement for purchase. He submitted that the Applicants have thus become owners of the land admeasuring 60 acres and have right, title and interest over the same and thus, if any payment of compensation is paid to the Petitioners in respect of land admeasuring about 60 acres, rights of the Applicants in the Interim Application would be seriously affected.

67. Mr. Narichania, learned Senior Counsel for the Petitioners in his rejoinder arguments relied upon Section 34(4) of the MID Act and submitted that the remedy in case of any dispute about payment of compensation, can be exercised under the said provisions by the party aggrieved. He invited our attention to the prayers in the writ petition and also the Affidavit in Reply filed by the Sub-Divisional Officer. He submitted that since there is no private negotiation between the parties, at any stage, or in any event in respect of the balance portion of the writ property, the Award has to be made by the Sub-Divisional Officer under Section 33(3) of the MID Act and not under Section 33(2) of the MID Act. The Petitioners are always ready and willing to hand over the balance portion of land to the Sub-Divisional Officer. He submitted that the Division Bench of this Court on 8 April, 2022 had directed the MIDC to deposit the amount in Court and thus, the MIDC be directed to deposit the balance amount of compensation in this Court. If this Court directs the MIDC to deposit the amount before the Authority, serious prejudice would be caused to the Petitioners.

68. Insofar as submissions made by the Intervenor are concerned, Learned Senior Counsel for the Petitioners relied upon the Affidavit in Reply filed by his clients to the said Interim Application and vehemently urged that the Learned Single Judge of this Court passed an order in terms of the Consent Terms in the said Commercial Arbitration Petition filed by Respondent No.5. The Learned Single Judge had recorded an undertaking on behalf of the Intervenor herein that in case of any shortfall or deficit to achieve the amount of Rs. 62,50,00,000/- payable by the Petitioners to the Respondent No.5, such shortfall shall be made good from the amount deposited in the Court.

69. Learned Senior Counsel submitted that the Intervenor cannot be allowed to contend that the Agreement entered between the Petitioners and the Intervenor has created any right in their favour and in the writ property.

REASONS AND CONCLUSIONS :

70. The questions that arise for consideration of this Court are;

(i) Whether the State Government who is empowered to pass an order of compulsory acquisition under Section 32 of the Maharashtra Industrial Development Act, 1961 can refuse to make an Award after issuance of notice under Section 32(2) of the MID Act on the ground that there is title dispute between the land owners with a third party or not?

(ii) Whether MIDC can refuse to deposit the amount of compensation with the State Government in respect of land under acquisition for which Notice under Section 32(2) of the MID Act was issued though the land has vested in the State Government, free from all encumbrances, in view of Section 32(4) on the ground that the alleged title dispute between the Petitioners on one hand and the Respondent No.5 or the Interveners on the other hand?

71. Under Section 32(1) of the MID Act, the State Government is empowered to acquire such land by publishing in the Official Gazette a notice specifying the particular purpose for which such land is required, and stating therein that the State Government has decided to acquire the land in pursuant of the said section.

72. Under Section 32(2) of the MID Act, the State Government is empowered to issue a notice before publishing a notice under sub-section (1) of Section 32 of the MIDC calling upon the owner of the land and any other person who in the opinion of the State Government may be interested therein, to show cause, within such time as may be specified in the notice, why the land should not be acquired.

73. Section 32(3) contemplates an opportunity of being heard to be granted to the owner of the land or by any other person interested therein after considering the cause, if any, shown by the owners of the land and by any other person interested therein, and after giving such owner a response to the notice issued by the State Government.

74. Section 32(4) clearly provides that when a notice under sub-section (1) is published in the Official Gazette, the land shall, on or from the date of such publication, vest absolutely on the State Government free from all encumbrances.

75. The proviso to Section 32(4) empowers the State Government to withdraw the land from acquisition by issuing

notice and by publishing of such notice in the Official Gazette, the land shall revert with retrospective effect in the person in whom it was vesting immediately before the publication of the notice under sub-section (1) subject to such encumbrances, if any, as may be subsisting at that time. The owner and other persons interested shall be entitled to compensation for the damage, if any, suffered by them in consequence of the acquisition proceedings as determined in accordance with the provisions of Section 33.

76. Under Section 32(5) of the MID Act, the State Government is empowered to issue a notice in writing, order any person who may be in possession of the land to surrender or deliver possession thereof to the State Government or any person duly authorized by it in this behalf within thirty days of the service of the notice where any land is vested in the State Government under sub-section 4 of Section 32. The consequence of not handing over possession by such person in pursuance of notice under Section 32(5) is provided under Section 32(6).

77. Under Section 32(6) of the MID Act, the State

Government is empowered to take possession of the land and may for that purpose use such force as may be necessary. Under Section 32(7) of the MID Act, where the land has been acquired for the corporation or any local authority, the State Government shall, after it has taken possession thereof, by notification published in the Official Gazette, transfer the land to the Corporation or that local authority, as the case may be, for the purpose for which it was acquired, and the provisions of Section 43-1A shall apply to any land so transferred.

78. Under Section 33(1) of the MID Act, the State Government is under obligation to pay compensation for acquisition, the amount of which shall be determined in accordance with the provisions of Section 33. Under Section 33(2), where amount of compensation has to be determined by agreement between the State Government and the person to be compensated, it shall be determined in accordance with such agreement.

79. Under Section 33(3), however, it is provided that where no such agreement can be reached, the State

Government shall 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 (3) is subject to proviso that no compensation exceeding such amount as the State Government may by general order specify, to be paid for such acquisition shall be determined by the Collector without the previous approval of the State Government or such officer as the State Government may appoint in this behalf.

80. The said Section 33(3) is subject to further proviso that the State Government while issuing the general order under the preceding proviso shall adhere to the provisions of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (for short 'Fair Compensation Act') relating to the determination of amount of compensation in accordance with the First Schedule, and rehabilitation and resettlement specified in the Second and Third Schedules, being beneficial to the affected families.

81. Under Section 33(4), the Collector is under obligation to give an opportunity to every person to be compensated to state his case as to the amount of compensation. Section 33(5) and (6) of the MID Act provide the factors to be considered by the Collector while determining the amount of compensation.

82. Under Section 34 of the MID Act, an appeal is provided by making an application to the Collector requiring that the matter be referred by him for determination of the Authority and in that event, the provisions of Fair Compensation Act shall mutatis mutandis apply to further proceedings in respect thereof. Under Section 35 of the MID Act, when the amount of compensation has been settled under Section 33, if any dispute arises as to the apportionment of the same or 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 Authority.

83. Under Section 36(1) of the MID Act, where the amount of compensation is determined by agreement, the

State Government shall pay such amount to the person or persons entitled thereto. Under Section 36(2) of the MID Act, where the amount of compensation is determined by the Collector under the provisions of Section 33, State Government shall tender payment of the compensation determined to the persons entitled thereto according to such determination and shall pay to them unless prevented by someone or more of the contingencies mentioned in sub-section (3).

84. Section 36(3) of the MID Act clearly provides that if the persons entitled to compensation according to the decision of the Collector do not consent to receive it, or if there be no person competent to alienate the land or if there be any disputes as to the title to receive the compensation, the State Government shall deposit the amount of the compensation so determined to the Authority. Section 36(3) further provides that any person admitted to be interested may receive such payment under protest as to the sufficiency of the amount of compensation. The said obligation is subject to further proviso that nothing therein contained shall affect

the liability of any person, who may receive the whole or any part of any compensation determined this Chapter, to pay the same to the person lawfully entitled thereto.

85. Under Section 37 of the MID Act, where any amount of compensation has been deposited to the Authority, under the last preceding section, the Authority may either of its own motion or on the application made by or on behalf of any party interested or claiming to be interested in such amount, order the same to be invested in such Government or other securities approved by the State Government as it may think proper, and may direct the interest or other proceeds of any such investment to be accumulated and paid in such manner as will, in its opinion, give the parties interested therein the same benefit therefrom as they might have had from the land in respect whereof such amount has been deposited or as near thereto as may be.

86. Section 38 of the MID Act provides that when the amount of compensation is not paid or deposited on or before taking possession of the land, State Government shall pay the amount of compensation determined with interest thereon at

the rate of four per cent per annum from the time of so taking possession until it shall have been so paid or deposited.

87. A perusal of the provisions in Chapter VI and more particularly Section 32(2) clearly indicates that even before passing an order of compulsory acquisition under Section 32(1) and even before publishing a notice under Section 32(1) publishing the decision of the State Government for acquiring the land for the purpose of development or by the Corporation or for any other purpose in furtherance of the land, merely on publishing of the notice under **Section 32(1)** calling upon the owner of the land or any other person interested who in the opinion of the State Government, the land vested absolutely in the State Government free from all encumbrances under **sub-section (4)** of Section 32 of the MID Act. In this case, admittedly, the notice under Section 32(2) was published on 19 November, 2019. Final Notification under Section 32(1) of the MID was published in the Government Gazette and local newspaper on 20 November, **2020**.

88. In our view, the entire writ property and the lands

which were the subject matter of the said Notification issued under **Section 32(1)** vested in the State Government free from all encumbrances from the date of such publication. Once the land is vested in the State Government, free from all encumbrances, the State Government is empowered to take possession of such land by calling upon the person who may be in possession of the land to surrender or deliver possession thereof to the State Government or any person duly authorized by it in that behalf within 30 days of service of notice. Any refusal to comply with the said order, the State Government is also empowered to take possession of such land and by using such force as may be necessary. In view of such powers vested in the State Government merely upon publishing of the notice under **Section 32(1)** of the MID Act, in our view, the State Government cannot refuse to make an Award on the ground that there appears to be a title dispute between the Petitioners and the Intervenors.

89. Be that as it may, under Section 32(3) of the MID Act, after considering the cause, if any, shown by the owner of the land or by any person interested therein and after giving

personal opportunity of being heard, the State Government is empowered to pass such order as it deems fit.

90. The dispute about apportionment has to be referred by the Collector for the decision of the Authority. In our view, the dispute between the parties, if any, in respect of apportionment of the claim which may even if arises because of the rival claims made by the parties, cannot be a ground for refusal to make an Award. The Maharashtra Industrial Development Act, 1961, is a self contained Code providing the entire mechanism from the stage of vesting of land in the State Government and for adjudication of the dispute, if any, in respect of compensation which may arise even on the basis of the rival claims made by the parties on the basis of their respective titles. It is common ground that in this case pursuant to an interim order passed by this Court and the order passed by the Supreme Court, the Sub-Divisional Officer had ultimately made an Award in respect of land admeasuring 16.871 hectares which is implemented.

91. The Supreme Court passed an order on 8 February, 2023 in Special Leave Petition filed by the Petitioners herein

and also the MIDC after taking note of deposit made by MIDC in respect of land admeasuring 16.871 hector and had permitted to be withdrawn by the Respondent No.5 herein. Supreme Court noticed that there was a change of circumstance, from that which existed as on the date when this Court passed an order on 1 December, 2022, as the Applicant therein has received a portion of the amount, that be the position, this Court will have to take a look into the matter and thereafter arrive at its conclusion. The Supreme Court clarified that the High Court before seeking compliance of the order dated 1 December, 2022 by the Respondents shall take note of the subsequent development and pass an order in accordance with law.

92. It is the case of the Sub-Divisional Officer in the affidavit in reply that the land admeasuring 16.871 hectares in respect of which the Award has been made was also not a contiguous land. However, in respect of the balance portion, an objection is raised that the land is not a contiguous land and thus, no Award can be made in respect of the balance portion in addition to the dispute arose in title, raised for

refusing to make an Award.

93. In this backdrop, we shall now consider whether Award has to be made by the Sub-Divisional Officer in respect of the balance portion of land, whether the compensation shall be paid to the Petitioners or Respondent No.5 or the Intervenors in absence of any consensus between them to receive any amount of compensation or upon making such award, the amount should be directed to be deposited either in this Court or before the Authority in terms of Section 36(3) of MID Act or not?

94. The Petitioners have produced the Consent Terms between the Petitioners and Respondent No.5 in Commercial Arbitration Petition (L) No. 2735/2021 on 5 May, 2021. A Learned Single Judge of this Court has disposed of the said Commercial Arbitration Petition in terms of the Consent Terms. There is a reference made of the writ property in the Consent Terms. The Petitioners herein had agreed and undertaken to this Court in the Consent Terms that in the event, the Petitioner and its nominees i.e. Goldshine and Jains collectively, receive 50% of the Settlement Amount on or

before the Settlement Date, then Respondent Nos. 1 to 3 shall be entitled to a grace period of not more than 4 months to make the payment of the balance 50% of the Settlement Amount to the Respondent No.5.

95. It is not in dispute that under the Consent Terms, the Petitioners agreed to pay a sum of Rs.62,50,00,000/- to Respondent No.5 and its nominees towards full and final settlement of all the disputes that had arisen between the parties. It is a common ground that Respondent No.5 has not been paid the entire settlement amount as agreed by the Petitioners under the said Consent terms filed in the Commercial Arbitration Petition. In view of the Award made by the Sub-Divisional Officer in respect of the part of the land, only part of the amount came to be released in favour of Respondent No.5. Respondent No.5 has already filed an application for execution of the order passed in the Consent Terms against the Petitioners.

96. Insofar as the Applicants in the Interim Application No. 2449 of 2023 are concerned, the Intervenor has contended that the Learned Single Judge had recorded

an undertaking given by the Applicants (Intervenors) containing an assurance that the compensation amount payable by the Sub-Divisional Officer, Karjat for acquisition of lands purchased by third parties from the Petitioner herein, including the Applicants shall be deposited with the Prothonotary and Senior Master of this Court, only after the amounts payable by the Petitioner have been paid. The Applicants (Intervenors) are also having certain dispute with the Petitioners.

97. Mr. Narichania, learned Senior Counsel for the Petitioners during the course of his arguments denied the claims of the Applicants and submitted that no amount was paid by the Applicants to the Petitioners under the Sale Deed relied upon by the Applicants.

98. It is thus clear that, the Petitioners have made a claim for recovery of the entire amount of compensation in respect of the land under acquisition, part of the amount received from the Sub-Divisional Officer under the first award dated 26 July, 2022 has been paid to the Respondent No.5

under the Consent Terms entered into between them. Respondent No.5 has to recover certain amount from the Petitioners under the said Consent terms which admittedly has been not paid. There are also rival claims made by the intervenors.

99. Though this Court made a suggestion to the Learned Counsel for the Petitioners, **Respondent No.5** and the Intervenors that in case of any award being made by the Sub-Divisional Officer, if parties agree for apportionment even before this Court, an appropriate order can be passed by this Court based on such agreement. The parties however did not agree to this suggestion.

100. In these circumstances, it would be appropriate if we direct the Sub-Divisional Officer to make award in respect of the balance portion of the land admeasuring **46.361 hectores** after complying with the provisions of law, expeditiously, within six months from today and to deposit the amount of compensation before the authority under Section 36 of the MID Act.

101. We, accordingly, pass the following order:

(i) Sub-Divisional Officer is directed to make an Award in respect of the **46.361 hectare** i.e. the remaining portion of land under Section 33(3) of the MID Act, without fail, within **two months** from today.

(ii) Respondent No.1 to deposit the amount that will be called for by the Sub-Divisional Officer in respect of the said portion of land **within a period of four weeks from today.**

(iii) Upon making such Award under Section 33(3) of the MID Act, the Sub-Divisional Officer shall deposit the amount of compensation with the Authority under Section 36(3) of the MID Act within two weeks from the date of making Award, without fail.

(iv) The Petitioners to hand over the possession of the balance land admeasuring **46.361 hectares** to the Sub-Divisional Officer within two weeks from today, without fail on 'as is where is basis'.

(v) It is made clear that if there is any consensus

between the Petitioners, Respondent No.5 and the Intervenor about apportionment of claim for compensation or any other parties, who has any right, title or interest of any nature whatsoever, parties are free to file their agreement before the Sub-Divisional Officer within four weeks from today for apportionment of the claim. If no consensus on the apportionment of the compensation by and between the parties is arrived, the Sub-Divisional Officer in the event, shall deposit the amount as directed in the abovesaid order within the time prescribed.

(vi) Upon the Petitioners handing over the possession of the balance portion of the land to the Sub-Divisional Officer, the Sub-Divisional Officer in turn shall hand over possession of the balance portion of the land to the Respondent No.1-MIDC in accordance with Section 32(7) of the MID Act.

(vii) The parties are at liberty to apply to the Collector for making a Reference to the dispute as

to the apportionment for the decision of the Authority within time prescribed, if any, under the provisions of the MID Act.

(viii) Upon making a reference by the Collector to the Authority on the dispute, the Authority shall invest the amount in such fixed deposits or other Securities as it is approved by the State Government, as the case may be

(ix) The amount that would be deposited by the Sub-Divisional Officer would be subject to the outcome of the adjudication of the dispute as to the apportionment by the Authority.

(x) Writ Petition is disposed of in the aforesaid terms. Rule is made absolute.

(xi) There shall be no order as to costs

(xii) Parties shall act upon an authenticated copy of the judgment.

(GAURI GODSE, J.)

(R.D.DHANUKA, J.)

Judgment dated 11 April, 2023 is corrected and uploaded as per the order dated 19 April, 2023 for speaking to the minutes.