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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 1430 OF 2022

1. Rajeev Kumar Damodarprasad Bhadani,
   Age : 60 yrs.
2. Satish Kumar Damodarprasad Bhadani,
   Age : 59 yrs.
3. Sudhir Kumar Damodarprasad Bhadani,
   Age : 48 yrs.
4. Sunil Kumar Damodarprasad Bhadani,
   Age : 47 yrs.
5. Shaildevi Damodarprasad Bhadani,
   Age : 75 yrs.
6. C.A. of 2, 3, and 5 Mr. Rajeev Kumar Bhadani

All resident of Thane, Indian Inhabitants,
103B, Siddhi Towers, Bhakti Mandir Marg,
Near Hari Niwas, Thane (W) 400 602. .. Petitioners

Versus

1. The Executive Engineer,
   Maharashtra State Electricity Distribution Company Limited (MSEDCL) (earlier 'MSEB')
   CCCM Sub-Division, 1st Floor,
   Vidyur Building, LBG Marg, Bhandup West
   Bombay – 400 058
2. M/s. Unit Arsens Developers,
   A Partnership Firm registered under the Indian Partnership Act, 1932, having their Registered Office at Madhuban Apartment,
   Ram Maruti Road, Naupada,
   Thane West, Thane.
3. Collector, Thane,

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The State of Maharashtra]
through Government Pleader,]
Appellate Side, High Court, Bombay.]
]...Respondents

Mr.Vishwajit Sawant, Senior Advocate a/w. Mr. Vipul Makwana i/b Mr.Yatin R. Shah *for Petitioners.*

Ms. Deepa Chawan a/w. Ms. Ruchi Patil and Ms. Amita Kamble i/b Ms.Kshitija Wadatkar Associates *for Respondent No.1.*

Mr.Sandesh Patil i/b Mr.Chintan Shah *for Respondent No.2.*

Mr. A.I.Patel, Addl. GP a/w. Mr. R.S. Pawar, AGP *for State/Respondent No.3-State.*

Mr Sunil Mane, *Executive Engineer, Mahavitaran is present*

CORAM : B.P. COLABAWALLA & SOMASEKHAR SUNDARESAN, JJ.

RESERVED ON: DECEMBER 15, 2023.

PRONOUNCED ON: JANUARY 05, 2024.

JUDGMENT: (Per, Somasekhar Sundaresan, J.) :

1. The challenge in this Writ Petition is to the acquisition of land admeasuring 6685 sq.mtrs bearing Survey No.432(P), situate at Village Panchpakhadi, Tal. Thane, District Thane ("***the Subject Land***") by the Maharashtra State Electricity Board ("***MSEB***"), without complying with due process of law as stipulated under the Land Acquisition Act, 1894 ("***the Land Acquisition Act***"). A 22/11 KV electricity sub-station and staff

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quarters (for convenience, collectively referred to as the "***Sub-Station***") of the Maharashtra State Electricity Distribution Company Limited ("**MSEDCL**"), the successor in interest of the MSEB, stand on the Subject Land. The Petitioners allege usurpation of land by reason of compensation not having been paid, and seek application of due process for award of compensation in accordance with law.

2. Petitioner No. 1 to Petitioner No. 4 are siblings and offspring of one Late Shri Damodarprasad Bhadani. Petitioner No. 5 is the widow of the Late Shri Damodarprasad Bhadani. MSEDCL is Respondent No. 1. After the unbundling of multiple roles of the state electricity boards pursuant to the Electricity Act, 2003, the MSEB was disbanded, with the electricity distribution activity in Maharashtra along with attendant assets including the Subject Land, vested in MSEDCL. M/s Unit Arsens Developers, a Partnership Firm, which has developed the land around the Subject Land, and had handed over possession of the Subject Land to MSEB in 1984, is Respondent No. 2. The State of Maharashtra through the Collector, Thane is Respondent No.3.

Petitioners' Contentions:

3. It is the case of the Petitioners that a much wider parcel of land was earlier owned by the extended Bhadani Family (including the sibling of

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the Late Damodarprasad Bhadani and his family). Pursuant to a Consent Decree among the extended Bhadani Family dated March 19, 1971 in Suit No. 221 of 1960, the ownership and possession of the Subject Land (as part of a much larger tract of land admeasuring about 55687.78 sq. mtrs.) came to be vested in the Late Shri Damodarprasad Bhadani. The Petitioners have inherited as co-owners, various properties at Thane at Village Panchpakhadi, bearing Survey Numbers 428 to 434 and a part of Survey No.485. This includes the Subject Land [Survey No. 432(P)].

4. According to the Petitioners, the Petitioners' late father and their uncle had engaged Respondent No.2 to develop various parts of the land held by them respectively. The Subject Land is said to abut a slum area, and no effective demarcation and survey of the land had been conducted. The Late Shri Damodarprasad Bhadani is said to have submitted a scheme for housing for weaker sections and by an order of the Competent Authority dated 25th October, 1979, which was further modified *vide* order dated 27th August, 1980, the Petitioners state, the land owned by them was proposed to be developed, and necessary sanctions from the Thane Municipal Corporation were sought. The Petitioners state that the Bhadani Family granted Respondent No.2 development rights in respect of certain parcels of land, retaining the right to execute conveyance to the society that would eventually be formed by those who acquired the

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developed properties. The 7/12 extract would show that the Subject Land stands in the names of the Petitioners. According to the Petitioners, recently, while conducting a survey to demarcate various properties to consider the potential for development of all the land owned by them, they realized that MSEDCL was in possession of the Subject Land.

5. In the absence of specific demarcation of each plot of land, the Petitioners submit they were under the impression that the Subject Land fell in the portion allocated to and held by their uncle's family under the consent decree. That arm of the Bhadani family too had engaged Respondent No.2 to develop the land belonging to them. The Petitioners state that a recent survey led to the discovery that the Subject Land occupied by MSEDCL was land belonging to the Petitioners. A private survey commissioned by the Petitioners, and conducted by one Mr. Rajan Hate, a Licensed Surveyor, between 4th April, 2019 and 10th April, 2019 culminated in a report dated 12th April, 2019 ("***Rajan Hate Report***"), which has been annexed to the Petition. The Rajan Hate Report indicates that an area of 6685 sq. mtrs. is in the possession of MSEDCL in respect of the Sub-Station.

6. Upon review of the Rajan Hate Report, the Petitioners exercised their rights under the Right to Information Act, 2005 ("***RTI Act***") to ask

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MSEDCL who owned the Subject Land, how it came into the possession of MSEDCL, and whether any acquisition proceedings had been conducted. MSEDCL's reply dated 25th June, 2019, based on a Possession Receipt dated 19th April, 1984, stated that the Sub-Station stood on a plot of land admeasuring 9700 sq. mtrs. MSEDCL confirmed that the said Subject Land is situated in Survey No.432 of Village Panchpakhadi, and stated that the owner of the land was M/s. Unit Arsens Developers, i.e., Respondent No.2. MSEDCL went on to state that possession of the said land had been taken on 19th April 1984. MSEDCL also confirmed that land acquisition proceedings had been carried out by MSEDCL in the years 1986 and 1988, but that later correspondence and records were not available. MSEDCL stated that a further search of documents was being conducted.

7. The aforesaid response led to a Supplemental Application dated 20th July, 2019 under the RTI Act from the Petitioners requesting for the documents on record with MSEDCL, on the basis of which, the reply dated 25th June, 2019 had been addressed. In response, *vide* reply dated 21st August, 2019, MSEDCL confirmed that the reply dated 25th June, 2019 had been based on the Possession Receipt dated 19th April, 1984, of which MSEDCL had a photocopy, and shared the same. The Possession Receipt shows that the party handing over possession had been

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Respondent No.2 while the party taking over possession was the Executive Engineer of MSEB. The Possession Receipt confirms that the MSEB had taken over possession of 9,700 sq.mtrs. of land carved out from Survey No.432 for the proposed *"Construction of 22 KV Sub-Station by the Maharashtra State Electricity Board"*. The Possession Receipt records the following :

> *"……..**the said Board has already moved the Government to notify the said piece of land for acquisition. Under section 128 & 129 of M.R.T.P. Act**. However, **pending finalisation** of the acquisition formalities and procedure, the Executive Engineer, Maharashtra State Electricity Board has on this day taken over, and M/s. Unit Aresens Developers have handed over the **possession of the above said plot in order to enable the Board to start the work and protect the said vacant land from probable encroachments**.*
>
> *The said **Board also hereby agrees that the compensation as may be fixed by the Government of Maharashtra, M.R.T.P. Act would be payable by the Board of the Government of Maharashtra**."*
>
> [Emphasis Supplied]

8. Therefore, the Possession Receipt evidences that the MSEB had moved the State to notify the Subject Land for acquisition under Section 128 and Section 129 of the Maharashtra Regional and Town Planning Act of 1966 ("***MRTP Act***"). The Possession Receipt records that "***pending finalization of the acquisition formalities and procedure***", the Executive

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Engineer of MSEB had taken over the Subject Land from Respondent No.2 to enable MSEB to commence work and to protect against probable encroachments (a position consistent with the stated abutment of slums and absence of demarcation).

9. The material on record also contains a letter dated 6th September, 1983, from Respondent No. 2, annexing a draft Possession Receipt responding to a letter from MSEB dated 1st September, 1983. The said letter sought approval of the draft Possession Receipt before actual possession is handed over. In the said letter, Respondent No. 2 has enquired whether the Collector, Thane had been moved by MSEB for acquisition of the Subject Land. The final Possession Receipt dated 19th April, 1984 appears to be a culmination of the said engagement between MSEB and Respondent No. 2, by which the MSEB had recorded that acquisition procedure under Section 128 and Section 129 of the MRTP Act would be followed later.

10. It is the Petitioners' case that they became aware that it is the Subject Land owned by them that MSEDCL is using for the Sub-Station from the Rajan Hate Report. Such possession stood confirmed upon receipt of the reply of MSEDCL dated 25th June, 2019 under the RTI Act. By 21st August, 2019, the Petitioners received the Possession Receipt from

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MSEDCL, and prepared for litigation when the Covid-19 pandemic intervened. They state that once courts resumed physical functioning, the Writ Petition was filed on 6th April, 2021. While MSEDCL has asserted that acquisition had been conducted between 1986 and 1988, the Petitioners state that there is nothing to show that any due process was actually followed.

11. The grievance of the Petitioners is that no compliance with due process applicable to land acquisition, such as the issuance of notice under Section 4, hearing of objections under Section 5A, declaration of notification under Section 6 and passing of an award under Section 11 of the Land Acquisition Act, 1894 ("***Land Acquisition Act***") has been conducted. Their submission is that if the Subject Land had been duly acquired in compliance with law, MSEDCL would be able to demonstrate the same. Evidently being in possession of the Subject Land, with nothing to demonstrate compliant acquisition and payment of compensation, the Petitioners accuse MSEDCL of being an unlawful encroacher and usurper of the Subject Land.

12. In these circumstances, the Petitioners submit, the only correct legal redress is that the land acquisition procedure under currently applicable law i.e. the Right to Fair Compensation and Transparency in

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Land Acquisition Rehabilitation and Resettlement Act, 2013 ("***the 2013 Act***") must be followed, and the Petitioners ought to be appropriately awarded compensation.

13. The Petitioners have filed further affidavits in the proceedings, namely, the affidavit in rejoinder dated 30th November, 2023 and an additional affidavit dated 14th December, 2023.

MSEDCL's Contentions:

14. MSEDCL has resisted the Writ Petition by filing multiple affidavits, namely: (i) affidavit in reply dated 11th July, 2022; (ii) affidavit dated 23rd October, 2023; (iii) affidavit dated 1st December, 2023; and (iv) affidavit dated 13th December, 2023.

15. In a nutshell, MSEDCL, through its multiple affidavits, has sought to resist the prayers of the Petitioners on three planks, which are summarized below:-

(i) That the Writ Petition is hopelessly delayed and vitiated by delays and laches. According to MSEDCL, the Writ Petition is filed nearly 40 years after taking over possession of the Subject Land on 19th April, 1984, and nearly 28 years after the construction of the Sub-

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Station (according to MSEDCL, the Sub-Station was constructed in 1993). According to MSEDCL it does not even have the original of the Possession Receipt (only a photo copy) and it is possible that the relevant records that would evidence compliance of the land acquisition laws are now missing, crippling its ability to resist the Writ Petition;

(ii) That factual disputes are involved, placing the Petitioner's prayers outside the scope of adjudication in a Writ Petition. MSEDCL has sought to suggest that perhaps possession of the Subject Land had been taken by MSEDCL from the Maharashtra Housing and Area Development Authority ("***MHADA***"). The means of bringing in this suggestion is by bringing on record a letter dated 4th November, 1992 written by the Assistant Engineer, Civil Sub-Dn, MSEB, Thane to the Thane Municipal Corporation ("***TMC***"), copying various executive engineers of MSEB in Kalyan, Wagle Estate, Thane and Bhandup. The said letter seeks permission of the TMC to construct a sub-station "at Panchpakadi, MHADA, Thana", in which it has stated that MSEB has "taken a plot admeasuring area 2505.60 sqm" from MHADA. Thus, MSEDCL seeks to speculate that potentially MHADA may have played a role in acquisition and then handed over the Subject Land to MSEDCL.

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Thereby, MSEDCL would suggest, disputed facts are involved, making it impossible for resolution in the writ jurisdiction under Article 226 of the Constitution of India; and

(iii) That in any event, even if there had been no delay or no compliance with acquisition procedures, under electricity law i.e. the Electricity Act, 2003 ("***Electricity Act***") and regulations made thereunder, the domain of land acquisition law in the context of electricity sub-stations has been done away with. According to MSEDCL, the Electricity Act has been held by the Hon'ble Supreme Court to have disrupted and changed even existing commercial contracts. According to MSEDCL, under Section 50 of the Electricity Act, read with Regulation 6.5 of the *MERC (Electricity Supply Code and Standards of Performance of Distribution Licensees including Power Quality) Regulations, 2021* ("***2021 Regulations***"), at best, any person handing over land to a Distribution Licensee for a sub-station can only get a lease rental of Rupee One per annum.

Other Parties' Contentions:

16. Respondent No. 2 has filed an affidavit dated 15th November, 2022 not only supporting the Petitioners but also attempting to expand the

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scope of the compensation beyond the 6685 sq. mtrs. area pleaded in the Writ Petition, to the area of 9700 sq. mtrs. referred to in the Possession Receipt. According to Respondent No. 2, the difference in area i.e. 3015 sq.mtrs. was land owned by Respondent No. 2 and that too needs to be compensated for.

17. The State i.e. Respondent No. 3 has not filed any affidavit in the matter.

Findings and Analysis:

18. We have heard Mr. Vishwajit Sawant, Ld. Sr. Counsel for the Petitioners, Ms. Deepa Chawan, Ld. Counsel for MSEDCL, Mr. Sandesh Patil, Ld. Counsel for Respondent No. 2 and Mr. A.I Patel, Ld. Addl. Government Pleader for Respondent No. 3. We have also given our anxious consideration to the pleadings and the material brought on record by all parties.

19. At the threshold, we should note that the Subject Land, as pleaded by the Petitioners and as identified in the Rajan Hate Report and on which, admittedly, the Sub-Station stands is 6685 sq.mtrs. The area of land referred to in the Possession Receipt and in the proceedings under the RTI Act and related correspondence between MSEDCL and the

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Petitioners is an area of 9700 sq.mtrs. This difference is reconciled by the affidavit dated 15th November, 2022 filed by Respondent No. 2, claiming that 3015 sq.mtrs (the difference in area) is land belonging to Respondent No. 2. Without filing any Writ Petition, even through the course of the present proceedings, Respondent No. 2 has sought to expand the scope of the land for which compensation is claimed to 9700 sq.mtrs. We are afraid we cannot bring within the zone of consideration anything beyond the area of 6685 sq.mtrs., which is identified and covered by the Writ Petition. Therefore, we have confined ourselves to the area of 6685 sq. mtrs. identified in the Rajan Hate Report and is the land area as set out in Schedule II of Exhibit A to the Writ Petition, and which is described herein as the "Subject Land".

20. In a nutshell, the Sub-Station (including the staff quarters) stands on the Subject Land. The Possession Receipt evidences that MSEB, the predecessor in interest of MSEDCL took possession of the Subject Land (in fact an area larger than the Subject Land) on 19th April, 1984. It is the State (and MSEDCL) that must demonstrate how they complied with the land acquisition procedures, and that too when they had themselves purported to initiate such procedures – the very Possession Receipt records that acquisition procedures under the MRTP Act would follow. Subsequent correspondence introduced into the record by MSEDCL

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would show that a composite and combined notification under the MRTP Act as also the Land Acquisition Act was under consideration. The Petitioners cannot be called upon to prove the negative and demonstrate that they were not paid.

21. Faced with this situation, MSEDCL, we find, has adopted varying (and at times contradictory) positions. In its reply dated 25th July, 2019 under the RTI Act, MSEDCL claimed that acquisition procedures had been complied with in 1986 and 1988. Documents brought on record in MSEDCL's reply points to discussions between Respondent No. 3 and MSEB on the manner and means of compliance with land acquisition law. For instance, the record contains a letter from Respondent No. 3 to MSEB suggesting invoking both the MRTP Act as well as Land Acquisition Act, but there is nothing to show that either was invoked. Once these proceedings were underway, MSEDCL has gone on to make multiple assertions – ranging from an argument that subordinate law made by state electricity regulatory commissions under the Electricity Act would supplant statutes made by Parliament and State Legislature on the matter of land acquisition; to introducing a speculative element of MHADA having been a potential acquirer; to arguing that a supplemental development agreement between the Petitioners and Respondent No. 2 would show that a sub-station had been envisaged; and to asserting that

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give the efflux of time, the Writ Petition is vitiated by delays and laches.

22. MSEDCL also relies on an agreement dated June 20, 1984 ("***Development Agreement***") for development of various parcels of land including land situated in Survey No.432 (the Subject Land forms part of Survey No. 432) had been executed between the Petitioners and Respondent No. 2. By executing the Development Agreement, the Petitioners were discharging their obligation under a scheme for housing for weaker sections presented by the wider Bhadani family, whereby Respondent No. 2 would construct buildings on the land covered by the Development Agreement. The Development Agreement contains various wide-ranging provisions that need not detain our attention, but according to the Petitioners, the Development Agreement did not confer any authority on Respondent No.2 to convey title to any part of the land. According to MSEDCL, the said agreement along with its Supplemental Agreement dated November 16, 1993 ("***Supplemental Agreement***"), presents a framework whereby erection of electrical Sub-Station was a matter that had been envisaged by the parties.

23. MSEDCL, describing the Possession Receipt has stated in its reply that the due process for acquisition under Section 128 and Section 129 of the MRTP Act had been initiated and the appropriate authority under the

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Land Acquisition Act had indeed undertaken such an exercise with a notification for acquisition under Section 4 of the Land Acquisition Act. MSEDCL relies on a letter dated 20th November, 1986 addressed by the Land Acquisition Officer, Thane to the Deputy Collector, Thane, which records that MSEB had taken possession of the land privately and had completed construction on it. Another letter dated 19th July, 1988 from the Additional Collector, Thane to the Administrative Officer, Town Development Division, State of Maharashtra brought on record by MSEDCL would show that publication of a notice under both, Section 4 of the Land Acquisition Act as well as Section 128 of the MRTP Act was under contemplation, proposing to give the Special Land Acquisition Officer, Town Planning and Valuation Department, Thane powers to so acquire land under such a notification. These are the two references to correspondence in the record that fall between 1986 and 1988, and they surely do point to the fact that an acquisition procedure was due and was in fact contemplated. What these two letters would also inexorably demonstrate is that no actual acquisition procedures had been complied with at least until 1988, although possession of the Subject Land had been taken over in 1984 and construction had apparently been completed on it by 1986.

24. These two letters would point to the fact that a proposal to issue a

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notification invoking Section 4 of the Land Acquisition Act read with Section 128 of the MRTP Act was under consideration in 1988. However, Respondent No. 1 and Respondent No. 3, through the journey of these proceedings, spread over two years, have not produced a shred of evidence to show that any of the steps involved under either legislation for land acquisition had been taken. Typically, in matters involving belated discovery of alleged non-compliance with land acquisition procedures, some vestige of compliant acquisition steps is brought to bear, and courts would tend to give them credence on the standard of a preponderance of probability. However, in this case, neither the State nor MSEDCL has produced anything to suggest compliance with land acquisition laws. On the contrary they have demonstrated that they had always admitted that the right to compensation under land acquisition law had accrued in respect of the Subject Land, with MSEDCL introducing a novel argument to state that when it comes to land acquisition for electricity sub-stations, electricity laws would upstage land acquisition legislation.

25. Consequently, the Petitioners made out a *prima facie* case for acquisition of the Subject Land, possession of which had been taken over in 1984, to be completed, with compensation to be computed in accordance with law. That brings us to the three fundamental elements

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of the opposition by MSEDCL to the Petitioners' case. We deal with them in the same sequence as summarized above.

Delays and Laches:

26. According to MSEDCL, the Writ Petition, filed on 6th April, 2021, represents a delay of nearly 40 years after 19th April 1984 i.e. the date of the Possession Receipt, and a delay of 28 years since construction (which is stated to be in the year 1993).

27. While MSEDCL confirms that it has been in possession of the Subject Land since 19th August, 1984, it would contend that the Petitioners were always aware of the erection of the Sub-Station on the Subject Land. Ms. Chawan relies on the Supplemental Agreement (executed in 1993) that refer to contemplation of infrastructure facilities such as erection of a sub-station, and provisions in the Supplemental Agreement by which Respondent No.2 had contracted that it would carry out development of the land including laying of electric cables and construction of substations and other necessary work, sharing the costs 2:3 between the Petitioners and Respondent No.2. Likewise, the amounts of deposit, if any, payable to MSEB for the erection of a sub-station mention in the Supplemental Agreement, records that Respondent No.2 would *inter alia* pay any amounts payable to Municipal Authorities,

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Government or any Public Body for land utilized for internal roads, recreation grounds and electric sub-station until the same is taken over by Municipal Authorities. Therefore, the Ld. Counsel for MSEDCL would contend, the erection of a sub-station on the Subject Land is a matter well known to the Petitioners, to underline the submission that there has been undue delay in the filing of the Writ Petition.

28. MSEDCL contends that the Sub-Station was constructed in 1993. However, the letter dated 20th November, 1986 from the Land Acquisition Officer, Thane to the Deputy Collector, Thane, also brought on record by MSEDCL, suggests that construction had been completed by 1986. Be that as it may, the core issue to consider is whether the Writ Petition being filed in 2021 represents a delay that is fatal to the Petitioners' case.

29. It is now trite law that in dealing with constitutional rights in the exercise of writ jurisdiction, one can no longer apply *mutatis mutandis*, the timeframe stipulated in limitation law as if they were attracted. The issue has been dealt with time and again by the Hon'ble Supreme Court, particularly in the context of land acquisition.

30. In *Tukaram Kana Joshi vs. MIDC – (2013) 1 SCC 353* ("***Tukaram***"), the Hon'ble Supreme Court ruled that that the constitutional right to

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property could not be defeated on technical grounds citing delay. Indeed, in the case of *State of Maharashtra vs. Digambar – (1995) 4 SCC 683* ("***Digambar***"), the Hon'ble Supreme Court had denied relief to farmers on the ground of delay, but delay was not simply declared to be an absolute bar on filing a Writ Petition. A plain reading of ***Tukaram*** would suggest that ***Digambar*** had not been noticed. In ***Digambar***, the Hon'ble Supreme Court was dealing with farmers who had consciously gifted land to the State under a specific scheme for drought relief, to build roads and infrastructure on the land donated, so that income could be generated for them. Decades later, the very same farmers filed writ petitions claiming compensation for the land acquired, and were awarded compensation by writ courts, only to be eventually struck down by the Hon'ble Supreme Court.

31. More recently, in *Sukh Dutt Ratna and Another vs. State of Himachal Pradesh and Others – (2022) 7 SCC 508* ("***Sukh Dutt***"), the Hon'ble Supreme Court has dealt with a whole line of judgments of the Hon'ble Supreme Court to emphasize that there can be no "limitation" to doing justice, if it is clear that the right to property has been intruded into without due process of law. Effectively, ***Sukh Dutt*** has repelled the citation of delay and laches in enforcement of the constitutional right to property in land. It is noteworthy that ***Digambar*** was cited at the bar

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when ***Sukh Dutt*** was argued, since the reliance by the State on ***Digambar*** has been recorded. However, the Hon'ble Supreme Court did not think it necessary to deal with ***Digambar*** in ***Sukh Dutt***. Suffice it to say, ***Digambar*** was a case where equity principles worked in favour of denial of relief rather than for considering grant of relief. In our opinion, the consideration of the facet of delay in ***Digambar*** must be read in that context and the adjustment of equities that was presented in the facts of that case.

32. We are conscious that these judgments deal with the interests of agrarian landowners' while the Petitioners are urban landowners – a point emphasized by Ms. Chawan on behalf of Respondent No. 1. However, to our mind that by itself cannot be an absolute and intelligible distinguishing factor. It is now trite law that while the right to property is not a fundamental right, it is still a precious constitutional right under Article 300-A of the Constitution of India. Any interference with property rights must comply with a validly made law. Merely because the judgments of the Hon'ble Supreme Court enforcing the rights to compensation for land acquisition have been in the context of rural land or farm land, the law declared would not become inapplicable merely because the land in question is urban land. Neither the Constitution of India nor the law declared by the Hon'ble Supreme Court makes such a

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distinction on whether a citizen of the Republic of India should be non-suited on the ground of the land being urban land as opposed to the land being rural land.

33. All the aforesaid cases – ***Tukaram***, ***Digambar***, ***Sukh Dutt*** (including the numerous other judgments referred to in ***Sukh Dutt***) – involve a gap of decades between the acquisition or possession and the filing of the Writ Petition. In our opinion, each petition must be dealt with, applying known reasonable principles on how to assess the impact of the Writ Petition being considered on merits. The question to ask is whether the petitioners must be denied a consideration on merits at the very threshold, on the premise that it would be inequitable to consider the Writ Petition.

34. The State cannot, on the ground of delay and laches, evade its responsibility towards those from whom private property has been expropriated. In any case, what principles a court must apply when assessing whether a Writ Petition is so hopelessly barred by delays and laches that a remedy is not worthy of consideration, is well articulated in *Maharashtra SRTC vs. Balwant Regulator Motor Service – AIR 1969 SC 329* ("***Maharashtra SRTC***"). These principles are extracted and endorsed in ***Sukh Dutt***. When one analyses ***Digambar***, it is noteworthy that these

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are in fact the principles on which the land-donor farmers claiming compensation decades later, were denied consideration by the Hon'ble Supreme Court.

35. In a nutshell, principles of equity must inform how a court deals with a defense of delays and laches. In the words of the Hon'ble Supreme Court (in ***Maharashtra SRTC***):-

> "***Two circumstances***, *always important in such cases, are,* ***the length of the delay*** *and the* ***nature of the acts done during the interval***, *which might affect either party and cause* ***a balance of justice or injustice in taking the one course or the other***, *so far as relates to the remedy*."
>
> [Emphasis Supplied]

36. We have considered these principles and applied them to the situation at hand. Apart from the length of the delay, whether the nature of the acts done during the interval has affected either party in a manner that causes an imbalance in delivering justice, is what this Court must consider. We find that denying the Petitioners an opportunity of their Writ Petition even being considered, merely on the ground of delay, to our mind, would be unjust to the Petitioners. On the other hand, considering the Writ Petition on merits would not tilt the scale against MSEDCL and the State.

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37. In the "interval" period i.e. between 1984 and 2021 (between the time the constitutional right to compensation for deprivation of property accrued and the time when the enforcement of that right was acted upon) there is nothing on the record to show that the Petitioners had conducted themselves in a manner that would disentitle them from pursing the remedy of a Writ Petition. There is nothing to show active knowledge of the Petitioners about the Subject Land being handed over by Respondent No. 2 voluntarily without compensation. The Subject Land forms part of a much wider area of land that was to be divided among different arms of the extended Bhadani Family. The Petitioners submit that they were under the belief that the land fell in the portion of entitlement of the other arm of the Bhadani Family. Nothing has been brought on record to show any involvement or positive knowledge and participation in the handover of possession of the land under their entitlement. The land in question was in the possession of Respondent No. 2 who was developing the land owned by the wider Bhadani Family. Evidently, it was Respondent No. 2 who handed over the land to MSEB, which recorded Respondent No. 2 as the owner of the land – effectively, the party parting with possession. Concurrently, there is contemporaneous evidence to show that at the time of possession and later in 1986 and then in 1988, the State was conscious that acquisition proceedings leading to computation and payment of compensation, was due from its end. The

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State was evidently seized of the need to comply with these requirements. For reasons best known to the State, that has demonstrably not been done till date.

38. Moreover, in the interval period, MSEDCL has augmented the capacity of the Sub-Station to distribute electricity to a wider range of electricity connections and has benefitted from the usage of the Subject Land. We called upon MSEDCL to provide us with a list of areas serviced from the Sub-Station and the flow of augmented capacity of the Sub-Station over the years, and it is apparent that the Sub-Station services areas far beyond the land developed by Respondent No. 2. In fact, MSEDCL has stated on record that further augmentation to make the Sub-Station an "EHV" (Extra High Voltage) sub-station is underway. Considering all the attendant facts and circumstances, we are not convinced that there would result any imbalance in justice or injustice if the Petitioners' grievance against the State's sheer inability to demonstrate even a smattering of evidence to point to compliant acquisition with appropriate compensation having been paid, is tested on merits.

39. We also note that this is a case where possession of the Subject Land had been taken upfront. The Possession Notice had stated that such

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possession was necessary to avoid encroachments, the Subject Land already having a slum at its boundary. The land in question was not demarcated at the time of possession. The State has benefitted from the Subject Land and MSEDCL has enhanced its distribution capacity at the site. Staff quarters have been constructed. The owners of the land have not been compensated. To borrow the words of the Hon'ble Supreme Court, when assessing whether providing any remedy would tilt the balance of justice or injustice in favour of one party or the other, we find that refusing to consider the petition on the ground of delay and laches alone would tilt the balance towards injustice against the Petitioners, whereas considering the Writ Petition on merits would do no injustice to either party.

Allegedly Disputed Questions of Fact – role of MHADA

40. MSEDCL has introduced the speculation that correspondence in its possession with TMC would indicate that MHADA had potentially played a role with acquisition of the Subject Land and that possession had perhaps been taken from MHADA and not Respondent No. 2. Well into the proceedings, MSEDCL claims to have "unearthed" a letter written to the TMC, suggesting that a plot of land had been taken from MHADA for some sub-station. MSEDCL would invoke such correspondence to argue that facts involved in the matter, could be in dispute, and such disputes

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cannot be adjudicated in a Writ Petition.

41. However, evidently, the very area of the land referred to in the correspondence is completely dissimilar to the Subject Land. MSEDCL submitted that this letter, dated 4th November, 1992, unearthed by it, would show that land admeasuring 2505.60 sq. mtrs. had been handed over by MHADA to MSEB, suggesting that perhaps MHADA may have acquired the Subject Land in compliance with due process of law, and then handed it over to MSEDCL. We have considered the letter dated 4th November, 1992 from MSEB to the TMC seeking approval to build a proposed Sub-Station in Panchpakhadi Village on MHADA land. Not only is the area of land indicated materially different (2505.60 sq. mtrs. as opposed to the 9700 sq. mtrs. indicated in the Possession Receipt) but also the said letter indicates that the plot of land in question was in the portion of land being developed by MHADA in Panchpakadi Village. The said letter does not have any whisper of a reference to the land falling within Survey No. 432(P), on which, admittedly, the Sub-Station relevant to these proceedings now stands. Besides, the letter dated 20th November, 1986 indicates that MSEB had already constructed on the Subject Land whereas the letter of 4th November, 1992 requests permission of the TMC to construct a sub-station – clearly, the letter from the MSEB to the TMC cannot relate to the Sub-Station constructed on the

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Subject Land. The very same letter indicates that there is a heavy demand for power supply in the region and therefore indicates a sense of urgency to TMC.

42. Mr. Sawant on behalf of the Petitioners contended that the land referred to in the letter of MSEB to the TMC as having been taken over from MHADA is another plot of land and that MHADA has had nothing to do with Survey No.432. In fact, upon MSEDCL bringing in the MHADA element, the Petitioners went on to once again visit the Subject Land and have adduced photographs of the Subject Land at the site of the Subject Land to demonstrate that the Sub-Station in fact stands on Survey No.432 and that no disputed facts exist for the writ jurisdiction to become unavailable. The Petitioners have also filed an additional affidavit, adducing an application under the RTI Act, dated 26th October, 2023, filed with MHADA asking for confirmation as to whether any land in Survey No.432 had been acquired by MHADA. In reply, vide letter dated 7th December, 2023, it appears that MHADA has confirmed that MHADA has not conducted any acquisition hitherto in Survey No. 432. The reply from MHADA also encloses an extract from the gazette notification published by MHADA under the Land Acquisition Act, 1894 for acquiring various pieces of land in Thane. While the said notification was made in July 1960 and indeed refers to various survey numbers,

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some of them in fact falling within Village Panchpakhadi in Thane, the notification would show that Survey No.432 was not at all covered by the land acquisition by MHADA. In short, MHADA had nothing to do with the Subject Land and the argument canvassed by Ms.Chawan on this aspect is only to distract our attention from the core issue in the present Petition.

43. Therefore, our attention need not be detained in speculating about what such correspondence with TMC may have been about. In any case, MSEDCL has not denied that the Sub-Station stands on the Subject Land, and the Subject Land falls in Survey No. 432(P) and that possession of such land had been taken from Respondent No. 2 (and not from MHADA) on 19th April, 1984. Had MHADA even remotely been connected to the Subject Land, one could have considered it arguable that a factual ascertainment of the specificity of the Subject Land is called for. Therefore, in our opinion, it is unnecessary to enter into any adjudication on what the correspondence with TMC was about. Suffice it to state that MHADA has nothing to do with the Subject Land.

44. Therefore, in our opinion, the letter dated 4th November 1992 unearthed by MSEDCL, does not create any cloud or raise any issue of disputed facts about the Subject Land. On the contrary, the

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correspondence brought on record by none other than MSEDCL would show that well before the letter to the TMC (4th November 1992), the need to issue a notification and discussion about issuing one under both the Land Acquisition Act and the MRTP Act in relation to the Subject Land, was an acknowledged position (letter dated 20th November, 1986 from the Land Acquisition Officer, Thane to the Deputy Collector, Thane; and letter dated 19th July, 1988 from the Additional Collector, Thane to the Administrative Officer, Town Development Division, State of Maharashtra). Besides, the letter dated 20th November, 1986 indicates that MSEB had already constructed on the Subject Land whereas the letter of 4th November, 1992 requests permission of the TMC to construct.

45. Possession of the Subject Land was evidently taken from Respondent No. 2 in 1984 and there was continued correspondence on the same among statutory authorities. Therefore, we are of the opinion that it is inappropriate and unreasonable for MSEDCL to throw in the letter dated 4th November, 1992 hinting at having taken over some plot of land of a totally different measurement in a totally different location, from MHADA in 1992, to argue that disputed facts are involved that a Writ Court cannot adjudicate.

46. It is also apparent that the challenge in the Writ Petition to

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MSEDCL's admitted occupation of the Subject Land without any evidence to show compliance with the law governing land acquisition, is based on the material provided by none other than MSEDCL. When the request for information was received under the RTI Act, MSEDCL did not assert that it would be impossible to respond due to non-availability of documents and the records. In fact, MSEDCL provided a copy of the Possession Receipt from its records *albeit* a photo copy. The Possession Receipt makes it clear that possession was indeed taken on 19th April, 1984 from none other than Respondent No.2 for no purpose other than construction of a Sub-Station, and it is the Sub-Station that currently stands on the Subject Land. The other two letters between the Land Acquisition Officer and the Collector's office are also part of MSEDCL's records, and corroborate the Sub-Station standing on the Subject Land. All these documents only point to MSEDCL's assertions before this Court to be far-fetched and incongruous.

47. In a nutshell, for all the reasons articulated above, we are not persuaded that any disputed question of fact has arisen owing to the letter written to the TMC by the MSEB about a plot of land having been taken from MHADA being unearthed. The allusion to MHADA, in our view, is a red herring and a disingenuous attempt to set a cat among the pigeons to somehow plead that the jurisdiction of this Court under Article

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226 of the Constitution of India must not be exercised.

Electricity Law Trumping Land Acquisition Laws:

48. That brings us to the final, and in fact, the core answer on merits, that MSEDCL has offered. According to MSEDCL, even if there had been no delay in filing the Writ Petition and regardless of the MHADA element, in any event, electricity law i.e. the Electricity Act and regulations made thereunder, have waded into the domain of land acquisition law. Specifically, Ms. Chawan contended that Section 50 of the Electricity Act stipulates the formulation of an Electricity Code. The 2021 Regulations, a self-contained code, is made under Section 50. Ms. Chawan would contend, that it deals with all manner of rights and obligations connected with supply of electricity. According to her, Regulation 6.5 of the 2021 Regulations, particularly the first proviso, would show that the Petitioners would at best be entitled to a lease rental of Rupee One per annum.

49. To appreciate this submission, it is necessary to extract the relevant provisions – Section 50 of the Electricity Act is extracted below:

> ***Section 50. (The Electricity Supply Code):***
>
> *The **State Commission shall specify** an electricity supply code **to provide for** **recovery of electricity charges**, **intervals for billing** of electricity charges, **disconnection** of supply of electricity **for non-***

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> ***payment*** *thereof,* ***restoration of supply*** *of electricity;* ***measures for preventing tampering, distress or damage*** *to electrical plant, or electrical line or meter, entry* ***of distribution licensee*** *or any person acting on his behalf* ***for disconnecting supply and removing the meter****;* ***entry for replacing, altering or maintaining*** *electric lines or electrical plants or meter and such other matters.*
>
> [Emphasis Supplied]

50. Even a plain reading of Section 50 is adequate to see that the 2021 Regulations (which essentially is the Electricity Supply Code) has nothing to do with land acquisition for purposes of erecting a sub-station or construction of staff quarters. Section 50 empowers the State Commission to regulate the relationship between the Distribution Licensee and the electricity consumer. It is a consumer charter that the state regulator is empowered to specify. To begin with, to extrapolate the 2021 Regulations, made by state electricity regulators, as a self-contained code that would supplant land acquisition law contained in statutes made by Parliament and State legislatures, is simply untenable. On the face of it, even if a State Electricity Regulatory Commission were to as presumptive as MSEDCL to assume jurisdiction over land acquisition matters, such a step would *ex facie* be *ultra vires* the Electricity Act. A plain reading of the 2021 Regulations would show that the Electricity Code does not even purport to be a complete code that even governs land acquisition. Such an extrapolation can only be put down to an extraordinary attempt at ingenuity by MSEDCL in these proceedings.

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Since a substantial quantum of time and length of pleadings have been expended on the issue, for completeness, the 2021 Regulations too are analyzed.

51. Regulation 6 must be seen in its entirety for MSEDCL's submission to be appreciated, and is extracted below:

> ***6 Processing of Applications :***
>
> *6.1* ***After a Distribution Licensee receives a duly completed application containing all necessary information / documents in accordance with Regulation 5.4 above****, the Distribution Licensee shall send its Authorised Representative to-*
>
> > *a.* ***inspect the premises*** *to which supply is to be given, with prior intimation to the Applicant; and*
> >
> > *b.* ***study the technical requirements*** *of giving supply.*
>
> *6.2* ***In order to give supply to the premises concerned****, the Authorised Representative shall, in consultation with the Applicant,* ***fix the position of mains, cut-outs or circuit breakers and meters at the ground floor*** *and sanction the* ***load for the premises****:*
>
> *Provided that* ***the service position shall normally be at an accessible location and the meter shall be fixed at a height so as to enable convenient reading*** *of meter and to protect the meter from adverse weather conditions:*
>
> *Provided further that* ***in multi-storied/ high rise buildings, metering point shall be at ground floor as agreed by Distribution Licensee considering safety and accessibility of meters****. In case that the Consumer requires metering points to be located at levels other than ground, he can do so with installation of Bus Riser arrangement at its own cost as per specifications approved by Distribution Licensee or pay actual expenses for undertaking such work by Distribution Licensee. Further, such Bus Rise shall be handed over to Distribution Licensee for operation and maintenance purpose:*

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Provided further that ***if there are any outstanding dues against the premises for which the requisition of supply has been made, new connection shall not be given until the time such dues are paid*** *in accordance with the Regulation 12.5 of this Code.*

6.3 ***No such inspection*** *referred to in Regulation 6.1 above shall be carried out of any domestic premises to which supply* ***is to be given between sunset and sunrise, except in the presence of an adult male member occupying such premises,*** *or an adult male representative.*

6.4 ***After an inspection*** *referred to in Regulation 6.1 above is carried out, the Distribution Licensee* ***shall intimate the Applicant of the details of any works that are required*** *to be undertaken.*

6.5 ***Where****, in the opinion of the Distribution Licensee,* ***the provision of supply requires installation of transformers, switch gear, meter and all other apparatus up to the Point of Supply*** *within the Applicant's premises,* ***the Applicant shall make a suitable piece of land or a suitable room within such premises available to the Distribution Licensee, by way of lease****:*

Provided that ***a suitable piece of land or a room shall be made available to the Distribution Licensee, by way of lease agreement at Rupee One (₹1) per annum****:*

Provided further that expenses, if any, towards registration of lease agreement shall be borne by concerned Applicant:

Provided further that ***any existing agreement, as on the date of notification of these Regulations, for use of such land or room may, upon expiry, be renewed on such terms and conditions as may be mutually agreed*** *between the parties, to be consistent with this Regulation 6.5:*

Provided also that ***where****, at the date of notification of these Regulations,* ***the Distribution Licensee is using any such land or room without an agreement for such use or under an agreement having no fixed expiry date, then such arrangement or agreement, as the case may be, for use of such land or room is deemed to have expired at the end of Two (2) years from the date of notification of these Regulations,*** *subsequent to which a fresh agreement may be entered into on such terms and conditions as may be mutually agreed between the parties, to be consistent with this Regulation 6.5."*

[Emphasis Supplied]

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52. A plain reading of the foregoing would make it apparent that Regulation 6 deals with supply of electricity to any "premises" of a consumer of electricity. To begin with, an applicant desirous of getting electricity supply may apply under Regulation 5.4 for supply, revision in load, shifting of service, extension of service or restoration of supply. Such an applicant would be a person occupying the premises for which supply of electricity is sought. Essentially, it is a consumer desirous of getting electricity supply, who has to apply. Regulation 6 governs processing of the applications so made by the Distribution Licensee. The actions to be taken and the mutual obligations and rights governing the relationship between the applicant and the Distribution Licensee are set out in Regulation 6. It is in that context and sequential flow of stipulated activity that Regulation 6.5 deals with provision of any portion of such premises for "*installation of* ***transformers, switch-gear, meter*** *and* ***all other apparatus*** *up to the Point of Supply within the Applicant's premises*". It is towards this end that an applicant is to make available "a suitable piece of land or a room within such premises" by way of lease at a lease rental of Rupee One (Re.1/-) per annum. Regulation 6.5 does not even envisage erection of a sub-station, and a sub-station is not an "apparatus" for it to be installed in a portion of a customer's building premises.

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53. To begin with, Regulation 6.5 deals with the contractual obligations between the consumer of electricity and the distributor of electricity. The subject matter of this provision of law is not at all land acquisition for construction of a Sub-Station or for that matter, staff quarters of an electricity generator or distributor. If a housing society or a premises society were to seek electricity connection for its constituents, Regulation 5.4 would deal with the stipulations for making the application while Regulation 6.5 would deal with the terms on which any local portion of the premises must be made available to the distribution licensee to enable smooth supply of electricity. Regulation 6.2 provides that where such premises are in a multi-storied or high rise building, such portion where apparatus would be installed must be on the ground floor.

54. Evidently, the draftsmen of the 2021 Regulations have taken care to stipulate what can be installed in such piece of land or room within the consumer's premises – these are transformers, switch gear, meters and other apparatus up to "the Point of Supply". The terms "Point of Supply" is in fact defined in Regulation 2.2 (mm) and is extracted below:

> *2.2 (mm) "**Point of Supply**" means the **point at the outgoing terminals of the Distribution Licensee's cutouts/switch-gear fixed in the premises of the Consumer**:*
>
> *Provided that, in case of HT and EHT Consumers, the **Point of Supply means the point at the outgoing terminals of the Distribution Licensee's metering cubicle** placed before such HT and EHT Consumer's apparatus:*

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> *Provided further that, in the absence of any metering cubicle or, where the metering is on the LT side of the HT or EHT installation,* ***the Point of Supply shall be the incoming terminals*** *of such HT and EHT Consumer's main switch gear.*
>
> [Emphasis Supplied]

55. It would be seen that a Point of Supply is a point fixed in the premises of electricity consumer to enable the last mile connectivity in the supply of electricity. At such point, the power supply is transformed into the form by which it can be drawn by the end-user consumer. Such a provision, which deals with the terms on which the Distribution Licensee shall supply electricity to the consumer, cannot by any stretch be extended to cover land acquisition for purposes of erecting sub-stations and building staff quarters.

56. At the risk of putting too fine a point on the evidently untenable contention of the State's electricity regulator having the power to override land acquisition laws made by Parliament, the scope of the 2021 Regulations contained in Regulation 1 too is extracted below :

> *1.1 This* ***Code shall be applicable to****:*
>
> *a. all* ***Distribution Licensees*** *including Deemed Distribution Licensees* ***and all Consumers*** *in the State of Maharashtra;*
>
> *b. all other* ***persons who are exempted under Section 13*** *of the Act; and*

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> *c.* ***unauthorized supply, unauthorized use, diversion*** *and other means of unauthorized use/ abstraction* ***of electricity****.*
>
> [Emphasis Supplied]

57. In short, the 2021 Regulations are indeed a self-contained Code, but a Code that governs the relationship between the electricity distributor and the electricity consumer, and not with land acquisition. Regulation 6.5 deals with installation of apparatus for the supply and consumption of electricity at the point of supply to the end consumer of electricity. The 2021 Regulations do not even purport to supplant the land acquisition legislation made by the Parliament of India or by State Legislatures. We are not impressed by the attempt to clutch at a proviso in a sub-regulation that requires providing a suitable piece of land or room for installation of the apparatus for the final connectivity to an electricity consumer, as a provision in a self-contained code that trumps all other land acquisition laws of the country.

58. For completeness, Ms. Chawan's extensive reliance on the last proviso of Regulation 6.5 too needs to only be stated to be rejected. Under that proviso, if any Distribution Licensee were using the room or land referred to in Regulation 6.5 without an agreement, such arrangement would come to an end in two years from the notification of the 2021

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Regulations and a fresh agreement would have to be negotiated, "***consistent with Regulation 6.5***". We have already opined on the scope of Section 50 and Regulation 6. It is not even MSEDCL's case that an application for final connectivity to supply electricity under Regulation 5.4 is what it was operating under. The Subject Land had been taken over in 1984. MSEDCL's argument would mean that no matter the state of non-compliance with land acquisition laws right since 1984, with effect from the 2021 Regulations, that arrangement would have to take the form of a lease agreement for a lease rental of Rupee One per annum, and that is the only possible outcome of a negotiation between the parties.

59. This is again a fallacious premise within the overall fallacy of treating Section 50 as enabling a state electricity regulator to supplant land acquisition laws by Parliament. All this proviso does is to provide an outer time limit for agreements that may be in existence where a room or a portion of land has been given by multi-storied or high rise building(s) for a lease rental that is not consistent with Rupee One per annum. The proviso in question stipulates a statutory expiry of such an arrangement and the parties would have to enter a new agreement that is consistent with Regulation 6.5. Charging a lease rental for providing a meter room or a transformer room is what this provision is about. It is not about acquiring several thousands of square metres of land to set up an entire

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sub-station and staff quarters, augmenting the capacity of such sub-station, enhancing it to an 'extra high voltage' ("**EHV**") sub-station, and treating such constructed assets as if they were "apparatus" to enable point-of-supply connectivity. Therefore, we have no hesitation in rejecting this line of argument that relies upon the 2021 Regulations totally out of context.

60. At our request, MSEDCL has also provided in its affidavit dated 13th December, 2023, the augmentation of capacity and load profile of the said Sub-station since inception. The data provided by MSEDCL relates to the period from 1987 to 2023. This, in itself should show that the Sub-Station was functional in 1987 and could not have been constructed in 1993. It is also apparent from the affidavit dated 23rd October, 2023 that the Sub-Station supplies electricity to an area much wider than the land area that was being developed by the Petitioners, and now caters to 15,825 customers ***spread over 10 feeders*** with each feeder having multiple transformers. It is an admitted position that the Sub-Station is being upgraded to an EHV sub-station. If at all one were to fit the 2021 Regulations into this fact pattern, it would be the ***transformers*** that receive supply through the ***feeders*** to enable supply of electricity to the constituents in various premises that would have to be housed in a "suitable piece of land" or "suitable room" for purposes of Regulation 6.5.

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61. Consequently, we have no hesitation in dismissing the submission that the Electricity Act has overtaken the Land Acquisition Act or the MRTP Act, and that Distribution Licensees have to pay nothing for land acquired in the past after the 2021 Regulations have been notified. Towards this end, the reliance by Ms. Chawan on the judgment of the Hon'ble Supreme Court in ***PTC India Limited Vs. Central Electricity Regulatory Commission through Secretary – (2010) 4 SCC 603 ("PTC")*** to suggest that the Regulations made under the said Act, make inroads into existing contractual relationships, is totally misplaced. The Hon'ble Supreme Court was dealing with pre-existing power purchase agreements and analysed the effect of the new law that regulates power purchase agreements on existing contracts of that character. That, by no stretch provides any support to argue that the 2021 Regulations would make inroads into pre-existing non-compliant land acquisition, where possession has been taken without any compliance with the obligation to pay compensation. In ***PTC***, regulations that dealt with fixation of trading margin in inter-state trading of electricity was being considered and it was held that those regulations would make inroads into pre-existing power purchase agreements. The following extracts, namely, para 66 and para 79 would be noteworthy:-

> *66 While deciding the nature of an Order (decision) vis-`-vis a*

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> *Regulation under the Act, one needs to apply the test of general application.* ***On the making of the impugned Regulations 2006, even the existing Power Purchase Agreements ("PPA") had to be modified and aligned with the said Regulations. In other words, the impugned Regulation makes an inroad into even the existing contracts****. This itself indicates the width of the power conferred on CERC under Section 178 of the 2003 Act.* ***All contracts coming into existence after making of the impugned Regulations 2006 have also to factor in the capping of the trading margin****. This itself indicates that the impugned Regulations are in the nature of subordinate legislation.* ***Such regulatory intervention into the existing contracts across-the-board could have been done only by making Regulations under Section 178 and not by passing an Order under Section 79(1)(j) of the 2003 Act****. Therefore, in our view, if we keep the above discussion in mind, it becomes clear that the word "order" in Section 111 of the 2003 Act cannot include the impugned Regulations 2006 made under Section 178 of the 2003 Act.*
>
> ….
>
> *79 Applying the above judgments to the present case,* ***it is clear that fixation of the trading margin in the inter-State trading of electricity can be done by making of regulations under Section 178 of 2003 Act****. Power to fix the trading margin under Section 178 is, therefore, a legislative power and the Notification issued under that section amounts to a piece of subordinate legislation, which has a general application in the sense that even existing contracts are required to be modified in terms of the impugned Regulations.* ***These Regulations make an inroad into contractual relationships between the parties. Such is the scope and effect of the impugned Regulations which could not have taken place by an Order fixing the trading margin under Section 79(1)(j)****. Consequently, the impugned Regulations cannot fall within the ambit of the word "Order" in Section 111 of the 2003 Act.*
>
> [Emphasis Supplied]

62. The Hon'ble Supreme Court was considering the conflict, if any, between orders passed under electricity law and regulations made under electricity law. To invoke ***PTC*** to suggest that it enables a creative

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reading of Regulation 6.5 of the 2021 Regulations (in a Code that governs the distributor-consumer relationship) to make inroads into land acquisition law (that govern the acquirer-landowner relationship) made by Parliament or by a State Legislature is untenable.

Conclusions:

63. Consequently, it is apparent that the prime argument on merits i.e. that electricity law has overtaken land acquisition laws and there is no need to pay any compensation for land acquisition towards construction of sub-stations is misconceived. For the reasons set out above, it is also clear that there is no reasonable dispute about the identity of the Subject Land and about whether possession of the Subject Land had in fact come from MHADA rather than Respondent No. 2. We have also already explained why it is appropriate not to treat this Writ Petition as one being unworthy of consideration on merits, on the ground of delays and laches.

64. Therefore, for the Subject Land having been taken over and constructed upon without any compensation having been paid, and without even a notification for land acquisition and consequential award of compensation, either under the Land Acquisition Act or the MRTP Act, we would need to consider what appropriate remedy would follow. In our considered opinion, the position that emerges is that even a specific piece

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of legislation has not been selected by the State for exercise of powers of land acquisition. The State's officers' discussions about whether the acquisition ought to be under the MRTP Act, or the Land Acquisition Act or both, are part of the record. The record points to the fact that the State was indeed aware of the need to pay compensation in compliance with law, but has not done so. The material on record also clearly brings out that the possession of the land was directly taken by the MSEB but the State was conscious that it ought to pay compensation. It is noteworthy that Respondent No. 3 has not filed any affidavit throughout the journey of these proceedings while Respondent No. 1 has filed four affidavits with wide-ranging contentions to resist the payment of compensation.

65. For the reasons set out above, we find that the Petitioners have indeed made out a case for compensation for the land handed over to Respondent No. 1. At this distance of time, there can be no question of vacating the Subject Land and handing it over to the Petitioners as prayed in prayer clause (a) in Paragraph 35 of the Writ Petition, which we reject. Multiple stakeholders have an interest in the use to which the Subject Land has been put, and there can be no question of granting such relief.

66. The Petitioners indeed have made out a case in terms of prayer clause (b) in Paragraph 35 of the Writ Petition, which reads thus:-

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> *Alternatively, this Hon'ble Court be pleased to issue a Writ of Mandamus or any other appropriate Writ, Order or direction in the nature of Mandamus thereby directing the Respondent Nos. 1 and Respondent No. 3 to acquire the said land mentioned in Schedule II of Exhibit A hereto as per the "The Right to Fair Compensation and Transparency in Land Acquisition Rehabilitation arid Resettlement. Act, 2013" and compensate the Petitioners appropriately;*

67. Neither have the acquisition proceedings been conducted culminating in an award, nor has compensation been paid. Yet, possession of the land has been taken without any compensation being paid. Even the legislation under which the acquisition was contemplated, after taking over possession of the Subject Land, and constructing on it, has remained a still-born contemplation (the choice between the MRTP Act and the Land Acquisition Act). Therefore, in our view, it would be appropriate to direct Respondent No. 3, the Collector, Thane, to compute compensation payable to the Petitioners under the provisions of the 2013 Act and pass an Award. This exercise shall be done within a period of three months from the date of this judgment. Once determined, Respondent No. 3 shall communicate the same to Respondent No. 1 and call upon Respondent No. 1 to deposit the compensation with Respondent No. 3 within a period of one month, from such communication. Once this deposit is made, Respondent No. 3 shall disburse the same in accordance with law.

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68. Rule is made absolute in the aforesaid terms and the Writ Petition is disposed of in terms thereof. However, there shall be no order as to costs.

69. This judgment will be digitally signed by the Private Secretary/Personal Assistant of this Court. All concerned will act on production by fax or email of a digitally signed copy of this judgment.

[SOMASEKHAR SUNDARESAN, J.] **[B.P.COLABAWALLA, J.]**

70. After the Judgment was pronounced, the learned Advocate appearing on behalf of Respondent No.1 sought a stay of this order for a period of eight weeks.

71. Considering that the direction we have given in the aforesaid order, namely, that the exercise of computing the compensation payable to the Petitioners under the provisions of the 2013 Act and pass an award is to be done within a period of three months from today, and Respondent No.1 is to deposit the compensation determined by Respondent No.3 within one month thereafter, we do not see any reason to stay the operation of our Judgment. In these circumstances, the prayer for stay of the Judgment is rejected.

[SOMASEKHAR SUNDARESAN, J.] **[B.P.COLABAWALLA, J.]**

Shraddha Talekar, PS

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