

CASE NO.:
Appeal (civil) 1398 of 2008

PETITIONER:
Yashwant Waman Patil & Ors

RESPONDENT:
Municipal Corporation of Greater Mumbai & Ors

DATE OF JUDGMENT: 18/02/2008

BENCH:
Tarun Chatterjee & Harjit Singh Bedi

JUDGMENT:
JUDGMENT

O R D E R
(Arising out of SLP[C] No.5670 of 2007)
1. Leave granted.

2. This appeal is directed against an interim order dated 22nd of December, 2006 passed by a Division Bench of the High Court of Judicature at Bombay, (Ordinary Original Civil Jurisdiction) in Notice of Motion No.380 of 2006 arising out of Writ Petition No.11 of 2005. On a pending writ application, a notice of motion was filed by the present appellants, inter alia, praying against others for deposit of additional sums in terms of an order of the Bombay High Court dated 29th of November, 2005 and also for an early hearing of the writ petition and further to direct the release of the amount deposited in favour of the appellants. It is not in dispute that in terms of the calculation sheet, the municipal corporation of Greater Bombay had already deposited in the High Court a sum of Rs. 17,23,29,933/-. The High Court by the impugned order had allowed the appellants to withdraw the amount deposited on the condition that the appellants shall furnish a bank guarantee in respect of the said sum on a prima facie finding that the Municipal corporation had enjoyed the possession of the acquired land for more than 40 years without making payment of compensation. It is this order, which is now under challenge in the present appeal.

3. We have heard Mr. Paramjit Singh Patwalia, learned senior counsel appearing for the appellants and Mr. Pallav Shishodia, learned counsel appearing for the respondents. Mr. Patwalia contended that the High Court had committed an error in imposing a condition on the appellants to furnish bank guarantee for withdrawal of the compensated amount when the respondents enjoyed the possession of the acquired land for more than 40 years without making payment of compensation. According to Mr. Patwalia, since the appellants had no source of income nor had any property to secure the withdrawal of the amount or to furnish bank guarantee, it would be a mere impossibility to withdraw the compensated amount and accordingly, in the facts and circumstances of the case, the condition imposed on the appellants should be withdrawn. This submission of Mr. Patwalia was hotly contested by Mr. Pallav Shishodia, learned counsel appearing for the respondents who contended that the appellants have already been paid in excess under the terms and conditions of an agreement of the year 1978 and if now they are permitted to withdraw the amount already deposited and lying in the court and in view of the submission of Mr. Patwalia that the appellants have no source of income nor have any property to secure the amount that would be withdrawn, it would be a mere impossibility to recover the amount

from the appellants, if allowed to be withdrawn, in the event the writ petition succeeds in which the award in question has been challenged.

4. Having heard the learned counsel for the parties and after considering the materials on record and considering the submissions made on behalf of the parties, we dispose of this appeal with the following directions:

[a] The amount deposited in the High Court shall be deposited in fixed deposit of any nationalized bank in the name of the appellants within a period of one month from this date initially for a period of six months which shall be renewed from time to time until further orders of the High Court or till the disposal of the writ petition whichever is earlier.

[b] The interest that would accrue on the aforesaid sum shall be permitted to be withdrawn without furnishing any security or without furnishing bank guarantee by the appellants but the principal amount to be invested as a fixed deposit in the Bank shall not be withdrawn by the appellants till the disposal of the writ petition or until further orders of the High Court.

[c] It is not in dispute that the amount awarded has already been deposited in the High Court, which is now lying. We are also informed that the amount has already been invested by the High Court. If the amount has already been deposited in a Fixed Deposit and any interest has already been accrued, the High Court is directed to release the interest amount out of the amount already deposited as a Fixed Deposit in favour of the appellant.

[d] However, the High Court is requested to dispose of the pending writ petition within a period of three months from the date of supply of copy of this order, without granting any unnecessary adjournment to either of the parties.

5. Accordingly, we modify the interim order of the High court in the above manner. The appeal is thus disposed of. No order as to costs.