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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**CIVIL APPLICATION NO.14 OF 2014
IN
PUBLIC INTEREST LITIGATION NO.27 OF 2011**

Suresh Kashinath Patil & Ors. ..Applicants

-Versus-

Jai Bhavani Reti Utpadak Co-op.
Soc. Ltd. ..Respondents

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Mr. D. S. Patil for the Applicants.

Mr. N. P. Deshpande, AGP, for the Respondent-State.

Mr. A. S. Khandeparkar i/b. Khandeparkar & Ass. For the Petitioners.

Mr. Suresh Kumar for the Respondent No.2 to 7.

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**CORAM: MOHIT S. SHAH, C. J. AND
A. K. MENON, JJ.**

DATE :- 15 JUNE 2015.

PC.:

Mr. Nitin Deshpande, learned AGP for the Respondent authorities states on inspection made on 20 December 2014, the Respondent authorities found sand to the tune of about 302 brass on the site in question Gat No.7 (New Gat No.12) Near Vaitarna Bridge. Earlier, the Applicants have removed 8240 brass of sand from the site in question.

2] According to the Applicants, the Applicants have removed brass to the tune of 12928 brass.

3] Whatever be the correct version, the fact remains that 302 brass of sand would be much less than the original 19200 brass of sand which according to the applicants was lying on the site in question, minus the quantity removed.

4] Learned AGP states that on 19 November 2014 complaint has been filed against the Applicants for theft in the Court of the learned JMFC at Vasai arising from FIR No.634 of 2014 of Vasai Police Station.

5] In view of the above, it appears that since the Court of the learned JMFC at Vasai is already seized of the factual controversy between the parties, this Court should not make any further probe in the present proceedings being Civil Application No.14 of 2014. At the same time, the fact remains that the Applicants had deposited Rs.15,00,000/- with the Registry of this Court and the question whether the same should be refunded to the Applicants or the entire amount or a part thereof should be allowed to be forfeited by the authorities was to be considered later on.

6] Now that the factual question is being going to be examined by the Court of the JMFC at Vasai, we accede to the request of the learned AGP to permit SDO, Vasai to withdraw the amount of Rs.15,00,000/- with the accrued interest thereon from the Registry of this Court subject to the condition that depending on the orders which may be passed by the learned JMFC at the conclusion of the trial, the amount or a part thereof will be permitted to be

appropriated by the SDO, Vasai or the amount or a part thereof may be ordered to be refunded to the Applicants. It will also be open to the learned Magistrate to pass any orders regarding payment of interest in case any part of the amount is to be refunded to the Applicants. In case, the learned JMFC takes the view that the Applicants had committed theft of sand, it will be open to the authorities to take further action in accordance with law.

7] The Applicants shall return the unutilized passes which according to the Applicants pertain to sand measuring 7272 brass to the SDO, Vasai within two weeks from today.

8] The Civil Application No.14 of 2014 is accordingly disposed of in the above terms.

9] It is clarified that the Civil Application was confined to the quantity of sand which was lying at Gat No.7 (New Gat No.12) Near Vaitarna Bridge, which according to the Applicants was to the tune of 19200 brass. The authorities are at liberty to take action in accordance with law, in respect of any other quantity of sand which might have been illegally excavated by any party.

CHIEF JUSTICE

(A. K. MENON, J.)