

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

**CIVIL APPLICATION NO.711 OF 2016
IN
FIRST APPEAL NO.276 OF 2016**

The City Survey Officer of (CIDCO) City
& Industrial Development Corporation
Ltd. & Anr.

.... Applicants

Vs.

Kashinath Ramchandra Mhatre & Ors.

.... Respondents

**WITH
CIVIL APPLICATION NO.2108 OF 2016
IN
FIRST APPEAL NO.276 OF 2016**

The City Survey Officer of (CIDCO) City
& Industrial Development Corporation
Ltd. & Anr.

.... Applicants

In the matter between

The City Survey Officer of (CIDCO) City
& Industrial Development Corporation
Ltd. & Anr.

.... Applicants

Vs.

Kashinath Ramchandra Mhatre & Ors.

.... Respondents

Mr. G.S. Hegde for the Applicants.

Mr. R.M. Haridas with Mr. S.S. Redij for Respondent No.1.

Mr. Amit A. Palkar, AGP, for Respondent Nos.2 to 4.

CORAM: S.C. DHARMADHIKARI &
B.P. COLABAWALLA, JJ.

DATE : DECEMBER 23, 2016

P.C:

1. We have heard both sides on the application for stay.
2. Although Mr. Haridas, appearing on behalf the first respondent/decreed-holder would submit that this Court should grant to respondent No.1/original plaintiff further time to file an affidavit opposing the stay application as he has instructions for insisting on at least a partial deposit of money in the trial Court, we are of the opinion that this application is pending from 15-1-2016.
3. The ad-interim order was passed on 4-5-2016. The ad-interim order directs the applicant/appellant/CIDCO to furnish Bank Guarantee in the trial Court in the sum of Rs.25 crores. Learned Advocate Mr. Hegde, appearing for the appellants, on instructions, states that the Bank Guarantee has

already been furnished and, on further instructions, he states that same would be kept alive till the disposal of the First Appeal.

4. Having noted the rival contentions on the point of stay of the decree of the trial Court, true it is that the same is a money decree. True it is that ordinarily there cannot be an unconditional stay of execution of money decree.

5. However, what we have noted is that in the grounds of appeal as also in a further application seeking to invoke this Court's power under Order 41, Rule 27 of the Code of Civil Procedure, it is submitted that the trial Court's decree is *ex facie* erroneous and illegal. Due to sheer inadvertence and the lapse on the part of the appellants' Officials larger public interest should not suffer. The argument is that respondent No.1/plaintiff has obtained the benefit in the form of this decree. He has obtained a compensation for acquisition of the land which stands acquired and vested in the appellants. For such acquisition and vesting, the benefit to the person interested

was already granted in the form of allotment of plot/area (12.5%) and cash compensation. The appellants have contended that there are documents which would evidence that respondent No.1/plaintiff was aware of all these proceedings. Though they were not brought on record, there is an application under Order 41, Rule 27 of the Code of Civil Procedure filed in this Court.

6. Mr. Haridas would submit that all this being brought before it, still the Court should not deviate or depart from the normal order but must modify the ad-interim order and direct deposit of cash amount under this money decree. Merely on furnishing of Bank Guarantee the successful plaintiff/decreed holder cannot obtain any benefit.

7. Having heard both sides, we find that this is a case where the appellants are *prima facie* contending that benefits which are not due and admissible to the first respondent/plaintiff have been obtained under the money decree. There would be a dual benefit even though the persons interested in the land have already been awarded whatever was

due to them. The respondent No.1 cannot complain that he was deprived of his property without due process of law. Being a public body and the likelihood of lapses and negligence on the part of the Officials in conducting the matter as serious as this cannot be ruled out. Not only the trial Court has awarded compensation for wrongful deprivation of the plaintiff's land/property, additionally, for mental agony and other loss, damages have been awarded. *Prima facie*, therefore, this is a peculiar case. In these circumstances and when there would be irreparable loss and injury particularly to public interest, we confirm the ad-interim order passed by this Court. The Bank Guarantee which is already furnished shall be kept alive till the hearing and final disposal of the First Appeal. The terms of the ad-interim order having been complied with, there will be a stay of execution and enforcement of the decree of the trial Court till the disposal of the First Appeal.

8. Civil Application No.711 of 2016 accordingly stands disposed of.

9. Civil Application No.2108 of 2016 to be heard along with the First Appeal.

(B.P. COLABAWALLA, J.)

(S.C. DHARMADHIKARI, J.)