

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

WRIT PETITION NO. 10509 OF 2017

Santosh Kashinath Gaikar & Anr. ... Petitioners.

V/s.

City & Industrial Development
Corporation of Maharashtra & Ors. ... Respondents.

Mr. Rahul Thakur, Advocate for the Petitioners.

Mr. A. M. Kulkarni, for Respondent No. 1.

Mrs. Madhubala Kajale, "B" Panel Counsel for the Respondent
Nos. 2 to 6.

CORAM : R.M. BORDE & N.J. JAMADAR, JJ.

DATE : MARCH 19, 2019.

PC :

1 It is the contention of the Petitioners that some portion of their land has been utilized by the CIDCO without taking steps for acquisition.

2 It is contended on behalf of the State Government in an affidavit-in-reply presented by one Ashwini Patil, Deputy Collector (Land Acquisition), Metro Centre No.3, Panvel, Dist. Raigad, that an area to the extent of 0-36-2 hectares has been acquired under the Award and the amount of compensation, determined by the Land Acquisition Officer, has also been paid on 27.04.1993. It is contended, in respect of 0.22 Are area, that the said portion of the property was never acquired and

as such there is no question of handing over possession of the said land by respondents and/or payment of any compensation.

3 An affidavit -in-reply has also been presented on behalf of Respondent No.1-CIDCO, wherein, it has been categorically stated that the said portion of the land which was not the subject matter of the acquisition/award, has not been taken in possession by CIDCO. It is stated in the affidavit-in-reply that a report has been sought in that regard from the Public Works Department (PWD) and such a report is awaited. It is a matter of controversy as to whether the portion of land to the extent of 0.22 Ares belonging to the Petitioner is taken in possession, which aspect need not be dealt with in exercise of extraordinary jurisdiction of this court.

4 In exercise of extra- ordinary jurisdiction of this court under Article 226 of the Constitution of India, the question of fact which is required to be adjudicated by the facts finding court need not be gone into by this court. Keeping option of the petitioner open to avail appropriate remedy available under the law, the writ petition deserves to be dismissed.

5 Writ petition stands dismissed accordingly with liberty.

(N.J. JAMADAR, J.)

(R.M. BORDE,J.)