

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

WRIT PETITION NO.2675 OF 2021

Vilas Madhavrao Paygude & Anr. V/s. Hindustan Petroleum Corporation Ltd., Through Dy. Gen. Manager, Shri. Rajesh B. Tupekar & Ors.	...Petitioners ...Respondents
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Mr. Deepak M. Gupte, Advocate for Petitioners.
Mr. Javeed Hussein i/b Hussein & Co. for Respondent No.1.

CORAM : A. S. GADKARI, J.
DATE : 13th JULY, 2021.
(Through Video Conferencing)

PC.:

1. The Petitioners original Plaintiffs/landlords have impugned Order dated 17th December 2018, passed below Exhibit 36 in Civil Appeal No.157 of 2018, passed by the learned District Judge-6, Pune, thereby rejecting the said Application preferred by the Petitioners for withdrawal of amount of compensation deposited by the Respondent No.1 in the said pending Appeal.
2. Heard Mr. Gupte, learned counsel for the Petitioners and Mr. Hussein, learned counsel for the Respondent No.1. Perused record.
3. Mr. Gupte, learned counsel for the Petitioners submitted that, though there is a decree in favour of the Petitioners, due to the said Appeal preferred by the Respondent No.1, the Petitioners could not get

possession of the suit property. The suit property is situated on the Pune Bangalore National Highway and its market value is approximately Rs.25 Crores, as of today.

He submitted that, the Order of fixing interim compensation was challenged by the Respondent No.1 by preferring Writ Petition No.8141 of 2018 before this Court. This Court, did not interfere with the said impugned Order dated 25th June 2018, fixing interim compensation and dismissed the said Writ Petition by its Order dated 14th August 2018. However, this Court had granted permission to the Petitioners to file an Application for withdrawal of the said amount deposited by the Respondent No.1 in the Appellate Court, which in fact the Petitioners did. However, their Application came to be rejected by the impugned Order dated 17th December 2018. He further submitted that, the Petitioners are senior citizens and are in a dire need of money for their day-to-day livelihood. He, therefore prayed that, the impugned Order may be set aside by allowing the Petitioners to withdraw the said amount.

4. Mr. Hussein, learned counsel for the Respondent No.1, drew my attention to the Affidavit-in-reply dated 9th March 2020, filed by the Authorized Officer of the Respondent No.1. He, however, with usual fairness at his command submitted that, taking into consideration the age of the Petitioners appropriate Orders in the interest of justice may be

passed.

5. It is a matter of fact on record that, while granting stay to the Judgment and decree passed by the Trial Court, the Appellate Court under Order 41 (5)(1) of the Code of Civil Procedure, 1908, had directed the Respondent No.1, to deposit a sum of Rs.2,47,500/- per month, towards interim compensation in the Registry of the Appellate Court. As noted earlier the said Order was not interfered with by this Court in Writ Petition No.8141 of 2018.

6. Mr. Hussein, learned counsel for the Respondent No.1 on instructions, submitted that, the Respondent No.1 is regularly depositing the said amount in the Registry of the Appellate Court. The record further indicates that, in furtherance of Order dated 25th June 2018, passed below Exhibit 3 in Civil Appeal No.157 of 2018, the said amount so deposited by Respondent No.1, is being invested in the Nationalised Bank.

7. In view of the submissions made by the learned counsel for the Petitioners and after taking overall view of the matter, this Court is of the opinion that, 50% of the amount so deposited upto 30th June 2021, alongwith interest accrued thereon, can be allowed to be withdrawn by the Petitioners. The landed property of the Petitioners, which as per the submissions of the learned counsel for the Petitioners, worth about Rs.25 Crores as of today, is more than sufficient security. If the Petitioners do not

succeed in the Appeal and if the Appellate Court directs them to bring back the said amount, the said amount can be appropriated in the said Appeal against rent and/or compensation to be paid by the Respondent No.1 Corporation.

8. In view of the above, the Appellate Court is directed to release 50% of the amount so deposited by the Respondent No.1 as of 30th June 2021, alongwith interest accrued thereon till 30th June 2021, in favour of the Petitioners on their furnishing an undertaking incorporating a clause therein that, in the event the Appellate Court directs the Petitioners to bring back the said amount so withdrawn by them, it will be appropriated towards the rent and/or compensation to be paid by the Respondent No.1 pertaining to the suit property.

It is needless to mention that, if the Petitioners succeed in the Appeal, the aforestated indemnity and/or direction will come to an end and ceased to remain in force thereafter.

9. The impugned Order dated 17th December 2018 is accordingly set aside.

10. Petition is allowed in the aforesaid terms.

11. All the concerned to act on the basis of an authenticated copy of this Order.

(A. S. GADKARI, J.)